

DRAFT

DEPARTMENT OF TOXIC SUBSTANCES CONTROL CALIFORNIA GREEN CHEMISTRY INITIATIVE PHASE 2 – KEY ELEMENT TEAMS

STRENGTHENING CONSUMER PROTECTION LAWS

Team Leader: Gale Filter, DTSC

Laws to protect consumers are scattershot. Some lack standard, other lack enforcement mechanisms. An effective system is needed to protect consumers from hazardous substances in products.

Team Members:

Corey Yep, DTSC-Asst. Team Leader
Peter Wood, DTSC-Asst. Team Leader
Kristen Smeltzer, DTSC
Ingeborg Small, DPH
Robert Schlag, DPH
Mark Rentz, DPR
Debbie Raphael, SF
Steve Giorgi, ARB
Erik Giorgi, DTSC
Tim Gergen, ARB
George Farnsworth, DPR
Valerie Charlton, DPH

Executive Summary

Laws to protect consumers from hazardous substances in products are numerous at both the federal and state level. While some hazardous chemical restrictions have thresholds specifically set in law, others have yet to be determined or lack specificity. There is a sense of inconsistency, confusion and the overall perception that consumer protection laws are ineffective because laws overlapping and regulate the same product, although many consumer products are not covered.

Although enforcement mechanisms vary widely and may include tools such as specific sampling and product embargo authority, records review and facility access, as well as penalty calculation and the ability to enforce in court via administrative, civil or criminal processes, these mechanisms are not applied consistently across the universe of consumer product laws.

Through an extensive public process to gather input from an interagency team, public workshops, and stakeholder feedback, options to create a more effective system to protect consumers from hazardous chemicals in products were developed and include

DRAFT

two stop gap measures that can be implemented in the short-term to improve *current efforts* for consumer protection from hazardous chemicals in products. The first would establish an interagency consumer products workgroup to establish a cooperative and coordinated working relationship in those instances where consumer products authorities overlap; the second would expand this relationship to share resources for compliance and investigative work.

The public workshops and stakeholder responses also brought out ideas for a cradle to cradle system for hazardous chemicals in consumer products, resulting in two additional more long-term options that form a logical stepwise method to build a cradle to cradle system. The third option would set the stage by filling in the consumer product gaps in the current system by covering consumer products absent from the regulated universe of currently identified chemicals of concern. The fourth would complete the cradle to cradle system by expanding the assessment and regulatory actions of the third option to all chemicals of concern, and would focus on criteria to identify and prioritize those chemicals of concern.

Problem Statement

Consumer protection from hazardous chemicals in products has taken a traditional “silo” regulatory approach. From product manufacturing, to consumer use, to disposal, the different stages of a product’s life cycle is overseen by a multitude of agencies in a traditional “cradle to grave” model. Green chemistry reinvents the traditional approach by using a “cradle to cradle” approach. The cradle to cradle approach examines a different way to reduce pollution and hazardous chemicals usage by engineering products that (1) are safer or less toxic for consumer use; (2) can be broken down easier for reuse; and (3) can be readily broken down in the environment.

Using a cradle to cradle approach would involve a more integrated approach since each stage impacts another stage of a product’s life cycle in a domino effect. In theory, the traditional independent “silos” (i.e., regulatory approach) should start blurring into each other as a product reaches its full potential for a cradle to cradle approach. For instance, the need to regulate product end of life disposal becomes minimal due to reuse of end of life waste materials as feedstock into new products. The traditional distinctions between waste and raw material are removed and become synonymous with each other. Consumer protection from hazardous chemicals in products becomes synonymous with less pollution, reuse and biodegradability.

Participants in the Green Chemistry Initiative Phase One indicated that that consumer protection in California could be strengthened. Specifically, the Phase One report indicated that one of the general themes identified as a “key element” was “Strengthening Consumer Protection Laws.”

DRAFT

“Laws to protect consumers are scattershot. Some lack standards, other lack enforcement mechanisms. An effective system is needed to protect consumers from hazardous substances in products.”

Consumer Protection Laws Are “Scattershot”

Laws to protect consumers from hazardous substances in products are numerous at both the federal and state level. Although the emphasis placed in this key element is consumer protection in California, there is recognition that state law must be consistent with federal law in regards to any bans or restrictions on chemicals and products.

The main agencies involved with hazardous chemicals in consumer products in manufacturing, use and disposal are:

- Manufacturing: Department of Industrial Relations
- Use: Department of Public Health, Air Resources Board, Department of Pesticide Regulations, Integrated Waste Management Board, and Department of Toxic Substances Control
- Disposal: Department of Toxic Substances Control, Integrated Waste Management Board, and State and Regional Water Quality Boards

Manufacturing

The Department of Industrial Relations (DIR), Division of Occupational Safety and Health oversees the worker health and safety, including protecting employees from unhealthy exposures to hazardous chemicals. The manufacture a consumer product containing a hazardous chemical would involve ensuring that proper precautions are taken to protect workers from hazardous chemical exposures. These precautions, including permissible exposure levels and personal protective equipment, are regulated by the DIR.

Use

Consumer use of products containing hazardous chemicals is overseen by a multitude of agencies, each with a slightly different intent, but with the same end result – restricting or banning the use of hazardous chemicals in consumer products. Briefly summarized they are as follows:

The Department of Public Health (DPH) oversees hazardous chemicals in consumer products and its unhealthy impacts to consumers. Some of the hazardous chemicals and consumer products they have administering authority over are “adulterated” cosmetics; lead and cadmium in tableware; lead and soluble mercury, cadmium, antimony, selenium, arsenic, and barium; and lead in candy.

The Air Resources Board (ARB) oversees consumer products containing volatile organic compounds and its impacts to the air, which then impacts public health.

DRAFT

The Department of Pesticide Regulation (DPR) oversees the registration of pesticides in California. Manufacturers must demonstrate to DPR that their products can be used safely to protect workers, consumers and children, and others who may be exposed to pesticides before the pesticide can be registered and used in California.

Use and Disposal

The Integrated Waste Management Board (IWMB) oversees the disposal of nonhazardous waste. Because products at their end of life will be disposed in landfills and because available landfill space is shrinking, waste diversion through recycling waste is encouraged. In some instances, products restrictions and bans were placed within their authority with the primary purpose of controlling land disposal and potential soil contamination, but at the same time phase out hazardous chemical usage to protect public health threats due to soil contamination (e.g., batteries).

The Department of Toxic Substances Control (DTSC) traditionally oversees and controls the disposal of hazardous waste. Many products at the end of their life are hazardous waste and although the primary focus of DTSC is hazardous waste disposal and site cleanup, the hazardous chemicals are the same whether present in waste, soil, or products. Recently, DTSC received authority over toxics in packaging, which has a primary concern over the packaging's end of life landfill deposition and its associated environmental and public health concerns. DTSC also recently received consumer protection authority over lead-tainted jewelry.

Disposal

The State and Regional Water Quality Boards (Water Boards) oversee and protect the California's waters by controlling the discharges into waterways. By controlling the discharges, the Water Boards indirectly control the products used by industrial dischargers, or in the case of landfills, the type of waste (or end of life products) accepted.

Consumer Protection Laws Lack "Standards"

While some hazardous chemical restrictions have thresholds specifically set in law, others are yet to be determined. For example, the lead threshold for candy is "in excess of the naturally occurring level," and the Office of Environmental Health Hazard Assessment (OEHHA) initiated public workshops in March 2008 to gather information and data to begin the determination process. Other "standards" lack specificity. For instance, an "adulterated" cosmetic is banned from manufacture and sale in California; "adulterated" is defined as poisonous or deleterious substance. Without further specificity, "adulterated" may include a limited or a very wide of the hazardous chemicals.

Consumer Protection Laws Lack "Enforcement Mechanisms"

Enforcement mechanisms may include tools to ensure compliance, such as specific sampling and product embargo authority, records review and facility access, as well as

DRAFT

penalty calculation and the ability to enforce in court via administrative, civil or criminal. In the Enforcement column of Table 1: California Lead Restrictions, the various enforcement mechanisms and tools are listed. They vary widely and without the appropriate enforcement mechanisms in place to ensure compliance with hazardous chemical bans and restrictions in consumer products, repeated offenses may occur.

“Scattershot,” Lacking “Standards” and Lacking “Enforcement Mechanisms”

Table 1: California Lead Restrictions provides an overview of some of the lead bans and restrictions in products and exemplifies how Green Chemistry Initiative participants found consumer protection laws confusing.

| Table 1 | | | |
|---|--|------------------------------------|--|
| California Lead Restrictions | | | |
| Legend DPH – Department of Public Health DTSC – Department of Toxic Substances Control OEHHA – Office of Environmental Health Hazard Assessment | | | |
| Product | Lead standard | Authorized Oversight Agency | Enforcement |
| Tableware | California law prohibits manufacturing, processing, importing, selling, deliver, hold for sale, supply, or offer for sale in California of tableware that leaches lead in excess of: - 3.0 ppm flatware - 2.0 ppm small hollowware - 1.0 ppm large hollowware - 0.5 ppm cups, mugs, large pitchers, and jugs | DPH | Civil Criminal Administrative Civil penalties up to \$5,000 per day Authority to enter, inspect, obtain samples, access records, and embargo |
| Candy | The sale of adulterated candy to California consumers is prohibited. Adulterated candy means any candy with lead in excess of the naturally occurring level. OEHHA is tasked with developing standards for the naturally-occurring level of lead in candies. | DPH OEHHA | Intentional sale of adulterated candy is subject to a civil penalty of \$500 per violation Authority to enter, inspect, obtain samples, access records, and embargo |
| Candy wrapper | The sale of adulterated candy to California consumers is prohibited. Candy is considered adulterated if its wrapper or the ink on the wrapper contains lead in excess of standards to be developed by OEHHA. Wrapper does not include any part of the packaging that lead will not leach from. | DPH OEHHA | Intentional sale of adulterated candy is subject to a civil penalty of \$500 per violation Authority to enter, inspect, obtain samples, access records, and embargo |

DRAFT

| <p style="text-align: center;">Table 1</p> <p style="text-align: center;">California Lead Restrictions</p> <p>Legend DPH – Department of Public Health DTSC – Department of Toxic Substances Control OEHHHA – Office of Environmental Health Hazard Assessment</p> | | | |
|---|---|-----------------------------|--|
| Product | Lead standard | Authorized Oversight Agency | Enforcement |
| Faucets, pipes, fittings | <p>California law prohibits the introduction into commerce any pipe, pipe or plumbing fitting, or fixture that is not “lead free,” except for a pipe that is used in manufacturing or industrial processing. Until December 31, 2009 “Lead free” plumbing materials means not more than:</p> <ul style="list-style-type: none"> - 0.2% lead in solder and flux - 8% lead in pipes and pipe fittings - 4% lead by dry weight plumbing fittings and fixtures <p>Beginning January 1, 2010, the standards for “Lead free” change.</p> | DPH | <p>Civil Criminal Administrative</p> <p>DPH is required to adopt building standards to implement this law. The standards shall be enforced by the appropriate state and local building and health officials.</p> |
| Painted or lacquered children's toys | Toys coated with paints and/or lacquers containing compounds of lead in excess of 600 ppm, or toys contaminated with any toxic substance cannot be manufactured, sold, or exchanged. | DPH | <p>Criminal</p> <p>It is a misdemeanor criminal offense to manufacture, sale, exchange lead-tainted toy with up to \$1,000 fine per violation and up to one year in jail.</p> <p>Embargo authority</p> |
| Children and Adult Jewelry | Jewelry designed or marketed for use by children aged six and under cannot be manufactured, shipped, sold, or offered for retail sale in California if the jewelry is made using materials that exceed the limit of either 200 ppm or 600 ppm or more of lead depending on the material. Statute provides alternative standards for jewelry intended for older children and adults. | DTSC | <p>Civil Administrative</p> <p>Penalties up to \$2,500 per day for each violation.</p> <p>Inspection and records review</p> |
| Packaging and Packaging components | The intentional introduction of lead into packaging or packaging components is prohibited. Also the sum of the total incidental concentrations levels of regulated metals, one of which is lead, cannot exceed 100 ppm . Statute provides limited permanent and temporary exemptions. | DTSC | <p>Civil Criminal Administrative</p> <p>Penalties up to \$25,000 per day for each violation.</p> <p>Inspection and records review</p> |

Table 1 illustrates that while lead standards exist, they vary in allowable concentration from product to product and in some cases vary in the way the lead concentration is analyzed in the laboratory to determine compliance. For example, the amount of lead present in jewelry is determined by using an analytical method specified in law and is

DRAFT

expressed as total concentrations of lead; that is, the entire amount of lead is determined in the jewelry. In contrast, the amount of lead in tableware is determined by a laboratory test in which the food-bearing part of the dish is exposed to a mildly acidic solution (vinegar) for a specific period of time. The acidic solution is then tested to see how much lead it contains. The test does not measure how much lead is in the dish, but rather how much lead can leach into food (leachable lead) when the dish is used.¹

Looking at the same two products, the enforcement tools differ as well. The enforcement mechanism for tableware provides specific statutory authority and allows the enforcement agencies (DPH and local health officers) the flexibility to sample and embargo suspect tableware and follows the distribution chain to remove lead-tainted tableware from the stream of commerce as quickly as possible.

Lead-tainted jewelry, however, does not provide the same statutory authority to the administering agency (DTSC) and there is no specific embargo authority. Without embargo authority, the administering agency does not have any assurances that the tainted jewelry is removed from the commerce stream; the tainted jewelry may find its way back into a retail establishment, such as a discount store. *Lead-tainted jewelry is lacking enforcement mechanisms in comparison to lead-tainted tableware.*

While the lead standards are set in tableware and jewelry, they are measured differently and the enforcement mechanisms are vastly different. In addition, a violator is subject to criminal prosecution for lead-tainted tableware, while lead-tainted jewelry expressly does not allow criminal prosecution. The fines are different and calculated differently; yet the hazard for lead is ingestion for both products.

A lead-tainted product may be regulated under several different lead laws, which further complicates compliance. For example, lead-tainted candy wrappers falls under two laws: (1) lead-tainted candy and the potential ability of the wrapper to leach lead into the candy it holds; and (2) toxics in packaging components, where lead is one of four metals in which the total concentration cannot be intentionally added or exceed 100 parts per million (ppm) in a packaging component. The same candy wrapper: two different administering agencies, two different lead standards, two different methods to analyze for lead, two different sets of enforcement tools, and two different types of potential penalties.

To complicate this example further, lead-tainted candy (e.g., ring pops) may fall under two laws: (1) lead-tainted candy; and (2) lead-tainted jewelry. There is the potential of overlapping authorities if the candy is considered a part of the jewelry and therefore, a jewelry component. The candy clearly falls within the authority of the law for lead-tainted candy, but also may fall under the lead-tainted jewelry. Both laws are intended to address risks to children and lead exposure through ingestion – through candy or from jewelry components. The same piece of candy: potentially regulated by two different administering agencies, two different lead standards, two different methods to

¹ <http://www.dhs.ca.gov/childlead/tableware/twregs.html>

DRAFT

analyze for lead, two different sets of enforcement tools, and two different types of potential penalties.

In total, the candy and the candy wrapper in certain instances may fall under three laws: (1) lead-tainted candy, which includes the candy wrapper, (2) lead-tainted jewelry, if the candy is considered a jewelry component, and (3) lead in packaging which is applicable to the candy wrapper.

Although there are differences in lead standards and analytical methods, in some sense these differences are rational because the intents of the laws are different, but there is nevertheless, *a sense of inconsistency, confusion and the overall perception that consumer protection laws are ineffective because laws overlapping and regulate the same product.*

To further illustrate frustration in the seemingly lack of consumer protection from hazardous chemicals in products, an unprecedented number of California legislative bills were introduced in 2008 to address consumer safety that legislators believe is not adequately addressed at the federal level. To name a few, Senate Bill (SB) 1334 (Calderon) requires plumbing materials to be certified for compliance with lead-free provisions by an independent third party. SB 1395 (Corbett) requires DTSC to establish lead plumbing monitoring and compliance testing as a part of the department's ongoing program to reduce toxic substances from the environment. AB 1879 (Feuer and Huffman), would expand the authority of DTSC to regulate chemicals of concern, including lead, in all consumer products. Others too numerous to specifically name were introduced with the intent to fill the consumer protection gap in California.

Of particular concern are the consumer products that are not covered under the current regulatory scheme for lead or other commonly accepted hazardous chemicals. For instance, children's insulated vinyl lunch boxes, backpacks, toddler vinyl or cloth books, and food storage containers are products where current hazardous chemical restrictions or bans may not apply. Whether the introduction of a hazardous chemical in a product is by accident or by design, if its presence is a public or environmental health risk, the tainted-product needs to be dealt with accordingly.

Challenge

The Green Chemistry Phase One report indicates that an effective system is needed to protect consumers from hazardous chemicals in products. Based on Table 1 and the examples described above, the description: *"Laws to protect consumers are scattershot. Some lack standards, other lack enforcement mechanisms"* are, to an extent, justified.

This objective of this key element is to develop *"An effective system is needed to protect consumers from hazardous substances in products."*

Approach

DRAFT

To begin the development of an effective system for consumer protection, DTSC

- 1) formed a Consumer Protection Interagency Team consisting of member representing the main agencies that have authority over restrictions and bans of hazardous chemicals in products (see Attachment A for the Interagency Team members);
- 2) conducted two public workshops to obtain feedback; and
- 3) solicited feedback from stakeholders by asking questions regarding consumer protection from hazardous chemicals in consumer products via the Green Chemistry listserv.

Section IV: Dialogue summarizes the salient points of the workshop discussion and feedback from stakeholders while the Consumer Protection Interagency Team provided guidance.

III. Background

To provide additional context to strengthening consumer protection, research was conducted on laws regarding consumer products and their hazardous chemical bans or restrictions. Table 2: Products and Regulated Chemical(s) of Concern provides a summary of findings. While every effort was made to ensure accuracy, Table 2 should not be considered a comprehensive list all consumer products, their hazardous chemical(s) of concern, and administering agency.

Table 2 shows that there are a number of federal and California agencies that oversee hazardous chemical restrictions and bans in products. While this is not an exhaustive list of products and hazardous chemicals, the number shown in Table 2 is quite daunting, and if the current trend in legislature continues, will continue to grow. This table also shows the number of different oversight agencies involved with hazardous chemicals in consumer products as assigned by law.

DRAFT

| Table 2 | | | | | | | | | | | | | | | | | | | | | |
|--|--|--|---------|------------------------|---------------------|----------|-----------|----------|--------|--------------------------|----------------------------------|------------------------|--------|-----------------------------------|-----|---------------------|-----------------------------|-------------------------------|------------|------|--------------------|
| Products and Regulated Chemical(s) of Concern | | | | | | | | | | | | | | | | | | | | | |
| Administering Agency | Product | Chemical(s) of Concern (COC) | | | | | | | | | | | | | | | | | | | |
| AG: Attorney General ARB: Air Resources Board CPSC: Consumer Product Safety Commission DHS: Department of Health Services DPH: Department of Public Health DPR: Department of Pesticide Regulation DTSC: Department of Toxic Substances Control FDA: Food and Drug Administration IWMB: Integrated Waste Management Board LHO: Local Health Officer OEHHA: Office of Environmental. Health Hazard Assessment USEPA: Unites States Environmental Protection Agency | | Lead | Mercury | Cadmium | Hexavalent Chromium | Antimony | Arsenic | Selenium | Barium | Adulterated ² | Halogens & Aromatic Hydrocarbons | Intentionally Added Hg | Metals | Non Biodegradable Toxic Chemicals | PCB | Penta- and Octa-BDE | Phthalates (DEHP, DBP, BBP) | Phthalates (DINP, DIDP, DnOP) | Pesticides | VOCs | Other ³ |
| | DPH LHO | Toys | X | "Soluble" ⁴ | | | "Soluble" | | | | | | | | | | | | | | |
| | DTSC | Packaging and Packaging Components | X | X | X | X | | | | | | | | | | | | | | | |
| | DTSC | General Purpose Lights | X | X | | | | | | | | | | | | | | | | | |
| | DTSC | Incandescent and enhanced spectrum lamps | X | X | | | | | | | | | | | | | | | | | |
| | DTSC | Covered Electronic Devices | X | X | X | X | | | | | | | | | | | | | | | |
| | ARB | Gasoline | X | | | | | | | | | | | | | | | | | | |
| | CPSC | Paint | X | | | | | | | | | | | | | | | | | | |
| | DHS State/ Local Building Agencies LHO | Solder in plumbing fittings or fixtures | X | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |

² "Adulterated" equals a poisonous or deleterious substance

³ Presumption of toxicity if the art or craft material contains as an ingredient 1% or more by weight of the mixture of the product a toxic substance causing chronic illness

⁴ "soluble" is defined as quantities of metals > 0.1% are dissolved by 5% HCl after stirring for 10 minutes at room temperature

DRAFT

| Table 2 | | | | | | | | | | | | | | | | | | | | | |
|--|--------------------------|---|---------|---------|---------------------|----------|---------|----------|--------|--------------------------|----------------------------------|------------------------|--------|-----------------------------------|-----|---------------------|-----------------------------|-------------------------------|------------|------|--------------------|
| Products and Regulated Chemical(s) of Concern | | | | | | | | | | | | | | | | | | | | | |
| Administering Agency | Product | Chemical(s) of Concern (COC) | | | | | | | | | | | | | | | | | | | |
| AG: Attorney General ARB: Air Resources Board CPSC: Consumer Product Safety Commission DHS: Department of Health Services DPH: Department of Public Health DPR: Department of Pesticide Regulation DTSC: Department of Toxic Substances Control FDA: Food and Drug Administration IWMB: Integrated Waste Management Board LHO: Local Health Officer OEHHA: Office of Environmental. Health Hazard Assessment USEPA: Unites States Environmental Protection Agency | | Lead | Mercury | Cadmium | Hexavalent Chromium | Antimony | Arsenic | Selenium | Barium | Adulterated ² | Halogens & Aromatic Hydrocarbons | Intentionally Added Hg | Metals | Non Biodegradable Toxic Chemicals | PCB | Penta- and Octa-BDE | Phthalates (DEHP, DBP, BBP) | Phthalates (DINP, DIDP, DnOP) | Pesticides | VOCs | Other ³ |
| | DPH | Pipes | X | | | | | | | | | | | | | | | | | | |
| | DPH | Water coolers / refrigerated water fountains | X | | | | | | | | | | | | | | | | | | |
| | DPH AG FDA CPSC | Candy | X | | | | | | | | | | | | | | | | | | |
| | DPH LHO | Tableware | X | | X | | | | | | | | | | | | | | | | |
| | DPH LHO CPSC | Toys with Lead Paint | X | | | | | | | | | | | | | | | | | | |
| | DTSC | Jewelry - Children | X | | | | | | | | | | | | | | | | | | |
| | DTSC | Jewelry -Adult | X | | | | | | | | | | | | | | | | | | |
| | DTSC | Vitrified or painted labels on glass containers | X | | | | | | | | | | | | | | | | | | |
| | Board of Pharm. | Thermometers | | X | | | | | | | | | | | | | | | | | |
| DHS | Novelty Items | | X | | | | | | | | | | | | | | | | | | |

DRAFT

| Table 2 | | | | | | | | | | | | | | | | | | | | | | |
|--|---------|------------------------------|--|---------|---------------------|----------|---------|----------|--------|--------------------------|----------------------------------|------------------------|--------|-----------------------------------|-----|---------------------|-----------------------------|-------------------------------|------------|------|--------------------|--|
| Products and Regulated Chemical(s) of Concern | | | | | | | | | | | | | | | | | | | | | | |
| Administering Agency | Product | Chemical(s) of Concern (COC) | | | | | | | | | | | | | | | | | | | | |
| AG: Attorney General ARB: Air Resources Board CPSC: Consumer Product Safety Commission DHS: Department of Health Services DPH: Department of Public Health DPR: Department of Pesticide Regulation DTSC: Department of Toxic Substances Control FDA: Food and Drug Administration IWMB: Integrated Waste Management Board LHO: Local Health Officer OEHHA: Office of Environmental. Health Hazard Assessment USEPA: Unites States Environmental Protection Agency | | Lead | Mercury | Cadmium | Hexavalent Chromium | Antimony | Arsenic | Selenium | Barium | Adulterated ² | Halogens & Aromatic Hydrocarbons | Intentionally Added Hg | Metals | Non Biodegradable Toxic Chemicals | PCB | Penta- and Octa-BDE | Phthalates (DEHP, DBP, BBP) | Phthalates (DINP, DIDP, DnOP) | Pesticides | VOCs | Other ³ | |
| | | DTSC | Barometer | | | | | | | | | | | | | | | | | | | |
| | | DTSC | Esophageal dialtor, bougie tube or gastrointestinal tube | | | | | | | | | | | | | | | | | | | |
| | | DTSC | Flow meter | | | | | | | | | | | | | | | | | | | |
| | | DTSC | Hydrometer | | | | | | | | | | | | | | | | | | | |
| | | DTSC | Hydrometer or psychometer | X | | | | | | | | | | | | | | | | | | |
| | | DTSC | Manometer | | | | | | | | | | | | | | | | | | | |
| | | DTSC | Pyromoeter | | | | | | | | | | | | | | | | | | | |
| | | DTSC | Sphygmanometer | | | | | | | | | | | | | | | | | | | |
| | | DTSC | Thermometer | | | | | | | | | | | | | | | | | | | |
| | | DTSC | Mercury diostats and ovens or gas ranges with mercury diostats | X | | | | | | | | | | | | | | | | | | |
| | | DTSC | Switches and relays | X | | | | | | | | | | | | | | | | | | |
| | | DTSC | Thermostats | X | | | | | | | | | | | | | | | | | | |
| | | IWMB | Batteries (Household alkaline and carbon-zinc dry cell) | X | | | | | | | | | | | | | | | | | | |
| | | IWMB | Batteries (Zinc-Carbon) | X | | | | | | | | | X | | | | | | | | | |
| | | IWMB | Batteries (Alkaline manganese) | X | | | | | | | | | | | | | | | | | | |
| | | IWMB | Switches in Cars | X | | | | | | | | | | | | | | | | | | |

DRAFT

| Table 2 | | | | | | | | | | | | | | | | |
|--|--|------------------------------|---------|---------|---------------------|----------|---------|----------|--------|--------------------------|----------------------------------|------------------------|--------|-----------------------------------|-----|---------------------|
| Products and Regulated Chemical(s) of Concern | | | | | | | | | | | | | | | | |
| Administering Agency | Product | Chemical(s) of Concern (COC) | | | | | | | | | | | | | | |
| AG: Attorney General ARB: Air Resources Board CPSC: Consumer Product Safety Commission DHS: Department of Health Services DPH: Department of Public Health DPR: Department of Pesticide Regulation DTSC: Department of Toxic Substances Control FDA: Food and Drug Administration IWMB: Integrated Waste Management Board LHO: Local Health Officer OEHHA: Office of Environmental. Health Hazard Assessment USEPA: Unites States Environmental Protection Agency | | Lead | Mercury | Cadmium | Hexavalent Chromium | Antimony | Arsenic | Selenium | Barium | Adulterated ² | Halogens & Aromatic Hydrocarbons | Intentionally Added Hg | Metals | Non Biodegradable Toxic Chemicals | PCB | Penta- and Octa-BDE |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| IWMB | Chemicals and measurement devices in school labs | | X | | | | | | | | | | | | | |
| ARB | Consumer Products Aerosol Coatings Antiperspirants & Deodorants Portable Fuel Containers Indoor Air Cleaners | | | | | | | | | | | | | | | X |
| DHS | Food | | | | | | | | | X | | | | | | |
| DHS | Drug or Device | | | | | | | | | X | | | | | | |
| DHS | Cosmetic | | | | | | | | | X | | | | | | |
| DPH | All products | | | | | | | | | | | | | | X | |
| DPH | Toys and child care articles | | | | | | | | | | | | | | X | |
| DPH | Toys and child care articles for 3 year olds and under | | | | | | | | | | | | | | X | |
| DPH OEHHA | Art or Craft Material | | | | | | | | | | | | | | | X |
| DPR USEPA | Pesticides | | | | | | | | | | | | | | X | |

DRAFT

| Table 2 | | | | | | | | | | | | | | | | |
|---|---|------------------------------|---------|---------|---------------------|----------|---------|----------|--------|--------------------------|----------------------------------|------------------------|--------|-----------------------------------|-----|---------------------|
| Products and Regulated Chemical(s) of Concern | | | | | | | | | | | | | | | | |
| Administering Agency | Product | Chemical(s) of Concern (COC) | | | | | | | | | | | | | | |
| AG: Attorney General ARB: Air Resources Board CPSC: Consumer Product Safety Commission DHS: Department of Health Services DPH: Department of Public Health DPR: Department of Pesticide Regulation DTSC: Department of Toxic Substances Control FDA: Food and Drug Administration IWMB: Integrated Waste Management Board LHO: Local Health Officer OEHHA: Office of Environmental Health Hazard Assessment USEPA: United States Environmental Protection Agency | | Lead | Mercury | Cadmium | Hexavalent Chromium | Antimony | Arsenic | Selenium | Barium | Adulterated ² | Halogens & Aromatic Hydrocarbons | Intentionally Added Hg | Metals | Non Biodegradable Toxic Chemicals | PCB | Penta- and Octa-BDE |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| DTSC | Sewage disposal unclogging products | | | | | | | | | | X | | | | | |
| DTSC | Chemical Toilet Additives | | | | | | | | | | | | | X | | |
| IWMB | Batteries (Small, nonvehicular, rechargeable) | | | | | | | | | | | | X | | | |
| IWMB | Cell Phones | | | | | | | | | | | | X | | | |
| IWMB | Batteries (Button, coin, cylindrical, or rectangular, and of a liquid starved or gel electrolyte, that is designed for commercial industrial, medical, institutional, or household use.) | | | | | | | | | | | | X | | | |
| US EPA | Oil | | | | | | | | | | | | | | X | |

DRAFT

While Table 2 demonstrates the number of administering agencies that are tasked with implementing chemical restrictions and bans in products, enforcement and compliance measures for them are not listed since they have not been confirmed. Some agencies, such as DPR and ARB have active programs for consumer product compliance. Many, if not all, agencies have a complaint system in place where consumers may lodge a complaint and a follow up investigation will ensue. DTSC in its recent authority over lead in jewelry and toxics in packaging have conducted focused initiatives to determine the rate of compliance and whether enforcement actions are necessary.

Table 2 does not list the hazardous chemical threshold that makes the product banned or restricted; however, Table 1: California Lead Restrictions illustrates that the thresholds can vary from total concentrations to leachable concentrations and from allowable concentrations to no allowable concentrations above naturally occurring levels in the environment.

Table 2, also provides an indication of the common regulated chemicals of concern: lead, mercury, cadmium and hexavalent chromium. Other (soluble) metals are also restricted in toys; i.e., antimony, arsenic, selenium, and barium. However, perhaps the most commonly of recognized toxic metal is arsenic. Table 2 also shows that penta- and octa - polybrominated diphenyls are hazardous chemicals with the broadest product scope since the fire retardant chemicals are banned in all consumer products. Phthalate restrictions in child care articles and toys are the most recent consumer product and hazardous chemical restriction and become effective on January 1, 2009.

Also note that by looking through the list of products in Table 2, there are products that are regulated for one hazardous chemical, but not for others. This at first blush seems insignificant, but upon reflection, the other hazardous chemicals are not regulated in this particular product, and may present a consumer hazard. *Products with known chemical toxicity may be present in non-regulated products.*

By providing this basic background information and examining the different components necessary to protect consumers from hazardous chemicals in products, the challenge to develop an effective system that keeps hazardous products from the stream of commerce may begin.

IV. Dialogue

The process to engage participants in a dialogue to provide input for developing an effective system to protect consumers from hazardous chemicals in products is briefly summarized below.

Interagency Team

The objective of the Interagency Team was to provide a forum for its members to share information on each agency's consumer product regulatory program while planning for the public workshops. Noted in particular were comments to increase cooperative efforts with restrictions and bans in overlapping consumer product authorities.

Several members of the Interagency Team were able to attend the first public workshop. Valuable insights were gained from the Interagency Team and the first workshop which was utilized to revise the format of the second public workshop. Members of the Interagency Team also provided comments on this Key Element Implementation Plan.

Workshop 1

The first public workshop was held in Sacramento on April 25, 2008. The objective of the workshop was to obtain input on the following options to strengthen consumer protection in California:

- Increase consumer awareness of existing laws
- Enhance enforcement authority
- Improve coordination among existing consumer protection agencies
- Should California have a single consumer product compliance and enforcement agency?
- Other Options

The following represents the themes, questions and miscellaneous observations that were received during the first public workshop.

I. Themes

- Laboratory Capabilities/Resources
- Agency Consolidation/Coordination
- Market-Driven Changes = Opportunities
 - Green Chemistry - Better bottom line \$
- Increased Consumer Awareness
 - Product Ingredients/Hazards (All)
- Models: Build on Existing Models
 - Air Resources Board Perchloroethylene & Dry Cleaners Rule
 - Arts & Crafts Materials Program
 - Voluntary Registration of Safe Products
 - Department of Pesticide Regulation's – Pesticide Re-evaluation Process

DRAFT

- Design for the Environment
 - AKA Extended Producer Responsibility
 - AKA Product Stewardship/Life Cycle Analysis
- Authorities
 - Recall
 - Embargo
 - Complaints (law suits)

II. Questions

- Are there existing State models?
 - Department of Public Health
 - Air Resources Board
 - Department of Pesticide Regulation
- What are the hindrances to using full authority given (e.g. politics, resources)?
- Should State regulate by Chemical or by Commodity?
 - Example Food
 - Microbial
 - Chemical
 - Physical Hazards
- How does the State become more proactive?
 - Example CFCs
- How do we frontload the green process?
- Should there be one central laboratory to test all products?
- What are some of the processes industry currently uses that can be shared and feed into Green Chemistry?

III. Miscellaneous Observations

- Resolving enforcement cases may be/is more difficult if multiple agencies are involved
- Chemical bans create innovation for alternatives
- System in place now is reactive, not proactive
- Alternative manufacturing ingredients need to be equally functional with original ingredients
- Information fatigue
 - Consumer Product Safety Commission alerts
 - Prop. 65 warnings
 - Labels
- Industry performs risk evaluations
- Good manufacturing processes

Workshop 2

The second public workshop was held in El Segundo, CA on May 8, 2008. The second workshop built upon the responses from first workshop and as a result three questions were posed to stakeholders.

DRAFT

Questions posed at Workshop 2:

1. How big should the universe be?
2. What attributes would make the current system more effective?
3. If a new model were to be created, what should be the focus?
 - Focus only on COC in terms of Green Chemistry
 - Should prioritize chemicals and focus on their hazardous traits
 - Shouldn't forget about the physical hazards though
 - Considering both chemical hazards and physical hazards may be too big of a universe to look at
 - If the universe is too big, how will you be able to enforce it?
 - Focus just on chemistry and COC
 - The State should be more involved regarding recalls with consumer products
 - No one present at the workshop became aware of the existing consumer protection laws through the governments education and outreach efforts
 - With limited resources, is there an opportunity for government and NGO's to work together and partner up and even a way for government and industry to partner up and work together.
 - Independently of what the government/NGO's are doing industry is beginning to jump on the Green Chemistry band wagon.
 - It is important not to duplicate efforts. We can work together and still acknowledge each others own interests.
 - Create a win/win partnership
 - We have only done forced partnerships with industry.
 - Approach trade associations for education and outreach.
 - Objectives to get industry involved – better bottom line and PR opportunities
 - Disagreement between labs is a problem. Different methods are being used for testing. We need a lab accreditation program in place.
 - Involve companies that may have money and want to be leaders.
 - What about all the small Mom & Pop providers and manufacturers – we need to reach out them somehow too.
 - The past has shown that partnerships have not worked by themselves – we need regulatory standards with teeth too.
 - Look to OEHHA for chemical testing methods.
 - Europe is moving on this – we need to get up to speed.
 - Chemical producer should be proving that the product is safe rather than us having to prove that the product is unsafe.
 - TSCA: over 80,000 chemicals, only 1/3 of them are tested for hazardous traits, it is a broken process
 - We need a process to ban bad chemicals that we are already aware of.
 - What type of enforcement tools is necessary? Search and inspection, certification of compliance by manufacturer/lab that is signed under penalty of perjury.
 - Large retailers can put pressure on the manufacturer.
 - Campaigns looking at shareholder agreements

DRAFT

- Campaigns looking at chemical policy reform – create public awareness of baby bottles, toxic in products, etc.
- Use indirect pressures as another tactic – we still need a comprehensive chemical reform policy.
- What role should the retailer have? Retailers don't usually know what is in their products.
- Make contracts between the retailer and their distributor/producer contain the laws (producers should provide the information).
 - What levels of COC cause dangers?
 - Can I sell the product in my store?
 - Is it compliant?
- Require a Certificate of Compliance – fix the problem at the manufacturer level.
- What happens to recalled products? What are the safeguards?
- There needs to be more clarity about what chemicals are in the products, is their information regarding hazardous traits of those chemicals – if not we need to start there.
- Product stewardship model
- Need to set a standard for green – what does green mean?
- We can get the big companies on board, but how are we going to get the small guys on board?
- What about people who use recycled products in their products? What if the recycled products were bad? You could assure that the recycled product wasn't bad by looking and testing it, but that price would only get passed down to the consumer.
- Is testing the only answer to really assure compliance?
 - Push for product stewardship
 - Need enforcement too
 - Green certification – what are the standards?
- Do we need a comprehensive policy to handle this?
- What about looking at Japan's current system?
- If we are going to have any impact we are going to have to show that our actions are actually improving the quality of the environment and the quality of life. The standards in place have to bring about results.
- Education and outreach
 - Partner with groups that can reach to the communities that need to get the information.
- The new regulatory framework/model should be flexible to include new products and new COC.
- Determining the hazardous traits of chemicals needs to happen first.
- Consolidate particular concerns regarding consumer products and coordinate better with others. Have a czar type person overlooking the different agencies involved.
- Can the feds do more? CPSC does not give the state authority over federal laws. The feds can give grants.

Public/Industry Questionnaires

To broaden stakeholder input regarding strengthening consumer protection, the Green Chemistry listserv was used as a vehicle to collect information to determine how to protect consumers from hazardous chemicals in products better. A number of questions were asked to ascertain the status of consumer, industry and nongovernmental organization knowledge regarding hazardous chemicals in consumer products. A summary of responses as well as actual responses are found in Attachments B to H.

The general consensus between respondents regarding enforcement was that enforcement was not adequate. Some respondents thought that the standards for hazardous chemicals were enforceable, but that enforcement was inconsistent and thus does not provide a level playing field to businesses. (I.S.9, I.S.6, I.S.4) Additionally, industry does not believe they are being consistently regulated in regards to hazardous chemicals in products. (I.S.10) The public respondents generally felt that there was not adequate protection from hazardous chemicals in products (C.S.3).

Ancillary to enforcement were general responses that the regulation of hazardous chemicals in products should be a joint responsibility between federal and state agencies and that in the absence of federal regulation, California should step up. At the same time, there is an indication that manufacturers should be responsible for the hazardous chemical(s) in the product and that they should self regulate themselves, while the government agencies should focus on the irresponsible manufacturers to protect the environment and consumers from harm (C.S.7).

There is a general consensus that a balanced chemical policy is needed to regulate hazardous chemicals, but in some instances respondents differed in opinion with the need to restrict more chemicals and noted that in some cases chemicals are over-regulated while others are under-regulated (I.S.5, I.S.10., C.S.3, C.S.5).

Lastly, although there is general consensus that industry and government have public education and outreach programs about hazardous chemicals in products, the public feels that information about current bans and product ingredients is lacking. (I.S. 7, I.S.8, C.S.1, C.S.2, C.S.4). The public indicated that the media and labeling were effective means of providing information to consumers. (C.S.4)

Strengthening Consumer Protection Foundational Questions

To broaden stakeholder input for the questions asked in Workshop 2, the Green Chemistry listserv was again used as a vehicle to collect information to determine how to enhance consumer protection. The questions were modeled after the questions in Workshop 2.

Scope

DRAFT

In general, respondents indicated that the scope of consumer products should be limited to hazardous chemicals in products, rather than mechanical safety, food and drugs. There seemed to be general agreement that limiting the scope of hazardous chemicals and products seemed reasonable to also limit any potential negative economic impact. Other hazardous chemicals and products could be added into the scope as deemed necessary. (F.S.1) This consensus was also reached in Workshop 2.

Making the Current Consumer Protection System More Effective

There was no clear consensus on enhancing enforcement authorities to make the current consumer products regulatory scheme more effective – respondents were split on this matter. A respondent indicated that product enforcement is necessary, while other asked the question “why is it not enforced now?” (F.S.2)

Only a slight majority of respondents indicated that increased consumer awareness of existing laws would make the current system more effective, which falls in line with the general statement that existing education and outreach from industry and government is lacking. (F.2, C.4) Overall, the consensus seems to indicate that better education and outreach is needed when considering a new regulatory model. (F.S.3)

There was no clear consensus from respondents regarding enhancing enforcement tools to make the current system more effective. Comments varied from using market recognition as an incentive to chemical bans with penalties to making sure what is being regulated now is working adequately. (F.S.2)

New Regulatory Model

Only a few respondents commented on the flexibility of a new regulatory scheme. Of those that responded, the general consensus was in agreement regarding a new regulatory scheme that includes the flexibility to add in additional product bans and to establish standards for hazardous products in commerce. However, comments were somewhat mixed regarding establishing specific regulatory thresholds for hazardous chemicals in products. One respondent commented that too many laws would be burdensome and create sensory overload to consumers, while another respondent commented that any regulatory thresholds established must be in an “active” system to accommodate changes more quickly than through changing laws. (F.S.3)

Overall, the majority of respondents were agreeable to the concept of a single consumer product compliance and enforcement agency as long as the model did not add to existing enforcement authorities in other agencies. (F.S.3)

V. Options

Through the input gathered from the interagency team and the public workshops, and stakeholder feedback, options for a more effective system to protect consumers from hazardous chemicals in products were developed. Through varying degrees of complexity and interagency cooperative effort, the following options are presented.

Stop Gap Measures

Option 1 and Option 2 were developed as stop gap or bootstrap measures to increase consumer protection in the current regulatory scheme for consumer protection and hazardous chemical bans and restrictions in products. The two options describe measures that can be done to enhance or improve *current efforts* for consumer protection from hazardous chemicals in products.

Option 1: Interagency Consumer Products Workgroup

Discussions held in the Interagency Team and in Workshop 2 led to the development of Option 1. The Interagency Team had an interest to communicate and coordinate with each other in their current consumer products efforts and with common or overlapping chemicals of concern. Workshop 2 concluded that the scope of consumer product safety should only involve chemicals of concern, rather than mechanical or physical safety hazardous. Melding the two concepts together, Option 1 was developed.

This goal of the Interagency Consumer Product Workgroup would be to:

- Increase understanding of each agency's program and authority;
- Establish a cooperative working relationship in those areas where overlapping authorities exist; and
- Coordinate consumer product activities to provide consumers with assurance that the agencies charged with hazardous chemical bans or restrictions are protecting consumers from hazardous chemicals in products.

Working towards these goals, the agencies will be able to share with each other successes and lessons learned to increase consumer protection through different strategies. Agencies with successful and self contained programs may be identified as potential models for other agencies to use to improve consumer protection from hazardous chemicals in products within each agency's authority.

The Interagency Consumer Product Workgroup would also coordinate efforts on hazardous chemicals in consumer products that crossover into other agencies' oversight. This would provide a unified and consistent message to manufacturers, distributors, and retailers that consumer protection is a high priority.

Option 2. Interagency Workgroup - Compliance Resources for Consumer Protection

Option 2 was developed as an outgrowth of observations of recent events with consumer product recalls and alerts about hazardous chemicals in consumer products

DRAFT

and a way to increase consumer protection. Option 2 is a method to enhance compliance and investigative efforts for tainted consumer products. While this topic was not brought up or discussed at the public workshops, the Interagency Team briefly touched on this concept of cooperatively working together on products with overlapping authorities. Option 2 builds on that concept.

The goal of this Interagency Workgroup builds on Option 1 goals. In addition to the goals identified in Option 1, Option 2 envisions a working relationship that involves sharing resources for compliance and investigative work. This would involve developing strategies to investigate hazardous chemicals in consumer products, sampling, laboratory analysis, and developing enforcement case work. The focus is to provide specialized expertise to agencies that may not have them to ensure compliance with existing hazardous chemicals bans and restrictions in consumer products.

Cradle to Cradle System for Hazardous Chemicals in Consumer Products

The public workshops and stakeholder responses brought out many ideas and specific thoughts for a cradle to cradle system for hazardous chemicals in consumer products. Fleshing out the details of a holistic cradle to cradle model from stakeholder input cannot be done in a vacuum, but broad concepts and general themes can be brought together to describe the basic components for a cradle to cradle system for consumer protection. Option 3 and Option 4 may be viewed as a logical stepwise method to build a cradle to cradle system.

Option 3 would stage the first steps by filling in the consumer product gaps in the current system with a limited scope of chemicals of concern. As noted earlier, *there may be consumer products that are not covered under the current regulatory scheme for hazardous chemicals. Whether the introduction of a hazardous chemical in a product is by accident or by design, if its presence is a public or environmental health risk, the tainted-product needs to be dealt with accordingly.*

Once Option 3 details were flushed out as outlined in more detail below, Option 4 would complete the cradle to cradle system by developing criteria for the last component. The options are described in more detail below.

Option 3. Limited Scope: Cradle to Cradle System for Hazardous Chemicals in Consumer Products

Option 3 would include a limited scope of chemicals of concern. Table 3 lists chemicals of concern that the California legislature has specifically acted upon and looks at their potential restrictions in other products. The legislatively restricted and banned chemicals of concern are: mercury, lead, arsenic, cadmium, hexavalent chromium, phthalates and polybrominated diphenyl ethers. While there are many other chemicals of concern to consider, these have been specifically acted upon legislatively and are a logical starting point to limit the scope of hazardous chemicals to consider. Pesticides and VOCs, although are chemicals of concern, were not included in Option 3 since DPR

DRAFT

and ARB have a fleshed out programs for those hazardous chemicals in consumer products.

Option 3 would fill the consumer product gaps left by Table 2 by covering consumer products, not currently in the regulated universe, and looking for the presence of one or more of the seven hazardous chemicals. The other chemical restrictions, bans and oversight agencies in Table 2 would not change.

An agency would be given the authority to devise a cradle to cradle system to assess the chemical hazard in other consumer products and if found necessary, restrict or ban their use in those consumer products.

Establishing a system for the seven hazardous chemicals in unregulated consumer products would include the following components:

- Criteria to prioritize the type of products.
- Restrict, ban or establish chemical thresholds in consumer products
- Consumer protection through compliance efforts including the ability to:
 - enter establishments where products are sold or held
 - embargo or quarantine products
 - take samples of suspect products for examination or testing
 - examine product documents to establish the flow into the stream of commerce
 - establish fines and penalties to ensure that the punishment meets the crime
 - compliance strategies for regulated industry to establish clear expectations
 - adequate laboratory support
- Education and outreach to public and industry including:
 - consumer information about chemicals in products – both recalled products and products on the market
 - product labeling
- Alternatives to hazardous chemical in the product.
- Product design to remove the seven hazardous chemicals from products for the ease of recycling and safe management.
- Self funding mechanism

Option 4. Full Scope: Cradle to Cradle System for Hazardous Chemicals in Consumer Products

Option 4 builds on Option 3 by incorporating all chemicals of concern and thus complete an effective system for consumer protection from hazardous chemicals in products. In addition to components in Option 3, this system would include the last component:

- Criteria to identify and prioritize the chemicals of concern.

VI. Implementation Plan

Option 1: Interagency Consumer Products Workgroup

To implement Option 1, an agreement with the oversight agencies must first occur, whether through agreement between directors of affected agencies or through a directive from the Governor.

The specific tasks for the Interagency Consumer Products Workgroup would include:

- Developing an interagency charter with roles and responsibilities.
- Identification of existing statutory authorities and responsible agencies.
- Identification of current resources to implement and enforce bans and restrictions.
- Recommendation for ongoing interagency coordination.

Option 2. Interagency Workgroup - Sharing Resources for Consumer Protection

Option 2 builds on Option 1's tasks and adds the following:

- Identification of compliance "gaps"
- Identification of specialized resources for investigation and compliance
- Recommendation for mechanisms to share resources

Cradle to Cradle System for Hazardous Chemicals in Consumer Products

Option 3. Limited Scope

Option 4. Full Scope

Specific tasks for Options 3 and 4 are the same. The tasks for Options 3 and 4 are limited in nature and require additional stakeholder input to flush out the details for Options 3 and 4. Specific tasks include:

- Scope out specific information needed from other agencies and stakeholders
- Plan and organize interagency workgroups and stakeholder meetings
- Develop recommendations for a Limited Scope or Full Scope Cradle to Cradle System for Hazardous Chemicals in Consumer Products

VII. Recommendations

Developing an effective system to protect consumers from hazardous chemicals in products, as mentioned previously, cannot be developed in a vacuum. The two workshops that were held as well as the questions posed to stakeholders through the listserv and on the Strengthening Consumer Protection Laws website, http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/CP_Laws.cfm, indicate the level of outreach made to stakeholders for this key element. The responses to the questions posed are summarized and presented as received in Attachments B to H.

The options presented in this document do not delve into the specific details of stakeholder comments, but taken in total, numerous ideas and concepts were brought out for consideration that could be developed into a Cradle to Cradle System for Hazardous Chemicals in Consumer Products, either through Option 3: Limited Scope or Option 4: Full Scope. Some of the comments could be taken as a starting point and a basis for additional focused workshops to further develop the cradle to cradle system.

Comments were mixed in terms of current or enhancing enforcement. This mixed message is perplexing in that an unprecedented number of consumer alerts and product recalls regarding children's items tainted with lead were issued in the last year. A measure of confidence is needed, whether the responsible lies at the industry or government or both.

Stakeholder comments and responses were indicative that a better system for consumer protection from hazardous chemicals is needed, but there was no general consensus on how that might be achieved. The Interdepartmental Team suggested that they would benefit with a better understanding of other agencies program as well as a coordinated effort to address authority crossovers in hazardous chemicals in consumer products. Option 1: Interagency Consumer Products Workgroup reflects the Interdepartmental Team consensus.

Option 2: Interagency Workgroup - Sharing Compliance Resources for Consumer Protection melds the Interdepartmental Team's consensus as well as in some regard, a measure of confidence needed to ensure compliance to current hazardous chemical bans and restrictions are occurring.

However, Option 3 is recommended in that to develop a more effective system to protect consumers from hazardous chemicals in consumer products, more work is needed to develop an *efficient* model. Options 1 and 2 are stop gap measures. Option 3 builds on the current system of hazardous chemicals in consumer products with a limited scope of chemicals of concern and sets in place many of the components to build the system into a full scope envisioned in Option 4 for protecting consumers from chemicals of concern in products.

DRAFT

Attachment A Key Element: Strengthening Consumer Protection Laws

Acknowledgements

On behalf of the Department of Toxic Substances Control and as the team leader for the California Green Chemistry Initiative Key Element - Strengthening Consumer Protection Laws, Gale Filter would like to thank the following individuals for their hard work in summarizing the consumer protection laws currently in place in California, discussing how our existing authorities operate and can be strengthened, conducting workshops, gathering ideas and comments from participants, and developing possible options for creating a new comprehensive and effective system to ensure consumer protection in California.

California Green Chemistry Initiative Key Element - Strengthening Consumer Protection Laws Team

(In alphabetical order)

Mike Berriesford, Department of Toxic Substances
Rick Brausch, Department of Toxic Substances Control
Valerie Charlton, Department of Public Health
George Farnsworth, Department of Pesticide Regulation
Tim Gergen, Air Resources Board
Erika Giorgi, Department of Toxic Substances Control
Steve Giorgi, Air Resources Board
Colleen Heck, Department of Toxic Substances Control
Ann Job, Department of Toxic Substances Control
Debbie Raphael, San Francisco Department of the Environment
Mark Rentz, Department of Pesticide Regulation
Robert Schlag, Department of Public Health
Ingeborg Small, Department of Public Health
Kristen Smeltzer, Department of Toxic Substances Control
Peter Wood, Department of Toxic Substances Control
Corey Yep, Department of Toxic Substances Control

DRAFT

Attachment B Key Element: Strengthening Consumer Protection Laws

Consumer Questionnaire Response Summary

Question 1: To your knowledge, does the state of California regulate the following classes of consumer products: jewelry, toys, cosmetics, pesticides, drugs, product packaging, and aerosol products?

C.S.1: Responses were evenly split between agreeing and disagreeing with this question. However, several individuals were uncertain as to the extent consumer products were regulated in California.

Question 2: If you answered yes to "Question # 1," please indicate which classes of consumer products you are aware of and to your knowledge, please describe how the State regulates that particular product (Do you know why the State regulates that particular product?).

C.S.2: Those individuals that answered "yes" to question 1 generally lacked specific knowledge on what consumer products are regulated in California with the exception of pesticides and VOCs in aerosols.

Question 3: In your opinion, do California's consumer protection laws provide you with adequate protection from harmful products (or products that contain toxic chemicals)?

C.S.3: The general consensus answer to this question was "no." One responder wrote, "No they do not. I am especially concerned about the piecemeal nature of the regulations - the time has come to stop worrying about one chemical at a time, and develop a comprehensive new chemical policy for the state that puts first priority on human health, that emphasizes creative solutions, and that we need to seriously consider cumulative impacts from multiple chemical exposure[s]."

Question 4: Do you agree or disagree that Californians need to be better informed about toxics in products? What are the three best ways to inform you about toxics in products?

C.S.4: The overwhelming majority of responders indicated that Californians need to be better informed about toxics in products. One responder wrote, "Yes - All people, not just Californians, need better information about toxics in products, including food, which is noticeably absent in your group above - possibly because it falls under the Federal and State Departments of Agriculture, where DTSC has not yet reached out, or overlapped intoyet?" Another responder wrote, "Yes, I agree that we need to be better informed. Media and labeling are the two ways I would like to be

DRAFT

informed. Perhaps developing an eco-label that is certified by the state that products are free from XYZ categories of harmful chemicals?"

Question 5: Do you agree or disagree that California needs to restrict more chemicals and/or compounds in products?

C.S.5: The majority of responders agreed that California needs to restrict more chemicals and/or compounds in products. One responder wrote, "California needs to be more restrictive", while another indicated, "Yes, there should be restrictions on known hazardous chemicals in products, with a balanced approach of providing incentives to design and offer safer alternatives." Another responder wrote, "I disagree. The state over-regulates some toxics already, such as VOC's and under-regulates others, such as lead..."

Question 6: Do you agree or disagree that California lacks sufficient funding to adequately regulate toxics in consumer products?

C.S.6: A slight majority of responders agree that California lacks sufficient funding to adequately regulate toxics in consumer products. One responder wrote, "Absolutely agree CA lacks adequate funding and regrettably policymakers are swayed from best-practices and preventive public health by chemical, cosmetic, drug special interests and campaign contributions." However, a significant number of responders disagreed with this question. One responder indicated, "I do not agree that California lacks sufficient funding. Such funding can be obtained."

Question 7: In your view, who is ultimately responsible for the regulation of toxic chemicals in products?

C.S.7: There was no clear consensus response to this question. Several responders thought this issue was the sole responsibility of the federal government, while others felt it should be a cooperative effort between the appropriate federal and state public health agencies. One of the latter responders wrote, "This should be a combined effort of the federal government and the states. But in the absence of federal leadership, CA has a responsibility to protect its communities and to send the right signals to the marketplace." Finally, a couple of responders felt that the manufacturers were ultimately responsible for the regulation of toxic chemicals in products. One wrote "Ultimately, the manufacturer responsible for placing the toxic in the products in the first place is responsible to regulate itself. The US government, the State governments, and local governments are responsible to prevent irresponsible manufacturers from polluting, injuring, maiming, and killing their citizens."

DRAFT

Question 8: What is the best way to get toxics out of products?

C.S.8: There was no consensus in any of the responses that were received. The responses varied from “Design and redesign safer alternatives.” to “Prohibit them in the first place.” However, one responder wrote “Education and regulation at the source (manufacturers) and at retailers by the Federal Government. A state by state approach will result in a patchwork of laws, confusion, higher product prices, limited availability of product choices and greater size of overall government than necessary to protect consumers.”

Question 9: As a consumer, who do you feel is most responsible for testing for toxics in products - retailers, distributors, manufacturers or the government?

C.S.9: The vast majority of responders identified manufacturers should be responsible for bearing the cost for product testing, but that the government should be responsible for developing the test methods and conducting the testing.

DRAFT

Attachment C Key Element: Strengthening Consumer Protection Laws

Responses to Consumer Questionnaire

| | |
|---|---|
| QUESTION 1: To your knowledge, does the state of California regulate the following classes of consumer products: jewelry, toys, cosmetics, pesticides, drugs, product packaging, and aerosol products? | |
| Katie Maynard | jewelry, - no; toys, -no; cosmetics, - federal? FDA?; pesticides, -no; drugs, - yes; product packaging, -federal? FDA?; and aerosol products - federal? |
| pine@shocking | No or inadequately. |
| Susan Browne Rosenberg | No, these are all regulated Federally. |
| Fred Klammt | Yes. Additionally, cities and the Feds have other various regulations. |
| George Dearmin | Yes, pesticides have historically been regulated from formulation plant to ultimate consumer user within the jurisdiction of the U. S. E. P. A., the Department of Industrial Safety, and the Department of Pesticide Regulation in concert with the County Agricultural Commissioner's staffs and U. S. Fish and Wildlife and the Department of Fish and Game. |
| Colleen Hunt | I DO NOT KNOW. |
| Todd Wirdzek | Yes I believe there are regulations on most consumer products. |
| sleethn@alltech1.biz | Yes, however off-base in results (China Imports). |
| Barbara J. Massey | Yes. |
| Ken Forbes | Yes, some products, such as aerosols, are regulated by the state of California. Others are regulated at the Federal level. |
| Marilyn Johnson | To some degree, yes. Still more opportunity to do better, since we know that there are many products out there that are nasty. |
| Jo Rupert Behm, M.S., RN | Some of them. I am aware of fairly recent legislation to inform the public of presences of dangerous chemicals in cosmetics & other personal care products, but not aware of laws to prohibit known carcinogens, endocrine disruptors, etc. in these products. Yes, to regulation on pesticides [but not strict enough] Not aware of any protection/regulation on jewelry, product packaging, aerosol household products. Yes, to regulation on industrial aerosols, but not strict enough. |
| Carol Massey | No, I thought this was only done at the federal level. |
| Lena Brook | My understanding is that CA regulates some chemicals in some product categories but not comprehensively and often after a exposure occurs, not proactively. |
| Jen Jackson | Yes. However, it seems that some of these things might only have warning labels for Prop 65, but other than that many things get on the market without adequate screening. |
| Lynnette Renfer | NO. |
| QUESTION 2: If you answered yes to "Question # 1," please indicate which classes of consumer products you are aware of and to your knowledge, please describe how the State regulates that particular product (Do you know why the State regulates that particular | |

DRAFT

| | |
|---|--|
| product?). | |
| Katie Maynard | See answer to question 1. |
| pine@shocking | |
| Susan Browne Rosenberg | |
| Fred Klammt | Its way too complicated and way too many regs to remember! Here's what comes to my mind: Pesticides: Air spraying over ag workers not permitted, other various limitations. Drugs: various FDA approvals, etc. Toys: Mostly I remember the City of San Fran outlawing chemicals, lead, etc. Aerosol: Follows the Montreal Protocol, Feds on CFC's etc. |
| George Dearmin | Health, safety and product uniformity. |
| Colleen Hunt | |
| Todd Wirdzek | I don't know the specifics. |
| sleethn@alltech1.biz | All hazmat & prop 65 listed, only after is already within jurisdiction. |
| Barbara J. Massey | Pesticides, toys, cosmetics, jewelry, drugs, product packaging and aerosol - with the exception of cosmetics which are not really regulated except under prop. 65 if applicable, all of the other categories except product packaging are regulated for lead or other toxic substances and are subject to the regulations of the department of toxic substances or the California water board. Product packaging must not be misleading and in some cases must contain warnings of toxic substances- certain packaging such as bottles and cans are subject to certain charges and fees. |
| Ken Forbes | In aerosols, the VOC content is regulated to reduced ozone forming precursor emissions. |
| Marilyn Johnson | Pesticides are of course regulated, with restricted use, banned, etc. This is due to the hazard they present both in the short and long term. Drugs to my knowledge are regulated through the FDA requirements. Aerosol products are regulated, but I believe it is more on the safety side. |
| Jo Rupert Behm, M.S., RN | Know there is some regulation to toys, cosmetics, drugs, pesticides, and industrial aerosols, but have no idea of details. |
| Carol Massey | |
| Lena Brook | There is some regulation of lead in jewelry, and mercury in many consumer products; only notification for cosmetics; I believe drugs are regulated primarily by the FDA and drug disposal into water is a critical emerging issue. Pesticides are regulated by DPR, but that agency often sides with sprayers and agribusiness rather than consumers. I am not familiar with product packaging regulations. |
| Jen Jackson | Pesticides are regulated by CA DPR, aerosols by CARB. Cosmetics, drugs and toys seem to me to fall under federal FDA jurisdiction. |
| Lynnette Renfer | |
| QUESTION 3: In your opinion, do California's consumer protection laws provide you with adequate protection from harmful products (or products that contain toxic chemicals)? | |
| Katie Maynard | See answer before. |

DRAFT

| | |
|---|---|
| pine@shocking | No! Not only are unsafe items allowed for sale, even if I don't buy them my children are exposed to toxic heavy metal trinkets, automotive byproducts, chemicals of convenience (pesticides). I am aware of being surrounded by chemical drift, residue and exhaust. |
| Susan Browne Rosenberg | Yes. |
| Fred Klammt | No - not even close! Even the most basic measurement tools that state has available (incl. private labs) can't measure needed low thresholds. |
| George Dearmin | Only as long as the regulatory action is uniform and consistent. |
| Colleen Hunt | NO. |
| Todd Wirdzek | No. |
| sleethn@alltech1.biz | No. |
| Barbara J. Massey | No. |
| Ken Forbes | Yes. Any additional regulatory protections should be created at the Federal level to avoid barriers to trade and to form a consistent national policy. |
| Marilyn Johnson | Seemingly not, as there remain many products that are not inherently 'benign'. |
| Jo Rupert Behm, M.S., RN | Definitely not. Otherwise, we would not see such huge disproportion of illness [asthma, cancer] in poor, crowded communities and among specific classifications of workers [salon workers, farm workers, autobody/paint workers etc.] |
| Carol Massey | No. |
| Lena Brook | No they do not. I am especially concerned about the piecemeal nature of the regulations - the time has come to stop worrying about one chemical at a time, and develop a comprehensive new chemical policy for the state that puts first priority on human health, that emphasizes creative solutions, and that we need to seriously consider cumulative impacts from multiple chemical exposure. |
| Jen Jackson | Absolutely not. With 62,000 chemicals grandfathered in under TSCA, many chemicals have not been adequately tested or reviewed for toxicity, endocrine disruption or environmental safety. |
| Lynnette Renfer | NO. |
| QUESTION 4: Do you agree or disagree that Californians need to be better informed about toxics in products? What are the three best ways to inform you about toxics in products? | |
| Katie Maynard | Agree. 1. Labeling Requirements on the Packaging 2. Education of Children (because the children teach their parents) 3. Easily navigable websites |
| pine@shocking | Agree. Products should undergo rigorous testing prior to being released to consumers. CalEPA should have an online information site. Schools should educate citizens of the importance of avoiding toxic consumer items. |
| Susan Browne Rosenberg | We get plenty of information already from the CSPC. |

DRAFT

| | |
|---|--|
| Fred Klammt | <p>AGREE - a difficult topic. Rather than overwhelming consumers with data + info; ID the worst top 10 and start informing on those. Ban the worse top 3 toxins altogether.</p> <p>Three Ideas:</p> <ol style="list-style-type: none"> 1. A numerical value (or color) on each shelf product. 2. Leverage cell phone technology for numerical (safety) score. 3. Internet, commercials, etc. Leverage existing media outlets. |
| George Dearmin | Yes, (1) label information requirements (2) product testing and (3) toxics elimination standards. |
| Colleen Hunt | AGREE. INFORMATION DIRECTLY ON THE PRODUCT, ENVIRONMENTAL SCIENCE COURSE FOR HIGH SCHOOL STUDENTS, MAILING INFORMATION. |
| Todd Wirdzek | Disagree. |
| sleethn@alltech1.biz | Agree. Engage in outreach & public service announcement programs. |
| Barbara J. Massey | <p>I agree.</p> <ol style="list-style-type: none"> 1. Place the information IN LEGIBLE TYPE not 3pt type on product packaging. 2. News releases. 3. Community activities such as collection of products that contain toxic. <p>Information alone is not sufficient. Neurotoxins in plastics, lead in lipstick and other toxics that are harmful and unnecessary should be banned.</p> |
| Ken Forbes | Yes - All people, not just Californians, need better information about toxics in products, including food, which is noticeably absent in your group above - possibly because it falls under the Federal and State Departments of Agriculture, where DTSC has not yet reached out, or overlapped intoyet? |
| Marilyn Johnson | I agree that information about products (not the regulations) is what is needed. Provide choices and allow consumers to make informed decisions. |
| Jo Rupert Behm, M.S., RN | <ol style="list-style-type: none"> 1. Environmental safety tips in multiple languages that target specific segments & locations where they would be expected to be: 2. Parents in clinics, daycare centers |
| Carol Massey | Notices where chemicals exist, websites, email. |
| Lena Brook | <p>Yes, I agree that we need to be better informed.</p> <p>Media, and labeling are the two ways I would like to be informed. Perhaps developing an eco-label that is certified by the state that products are free from XYZ categories of harmful chemicals?</p> |
| Jen Jackson | Get products off the market that contain ingredients that harm human or environmental health. 2) Label products that may harm human or environmental health. |
| Lynnette Renfer | AGREE. PRESS: PRINT AND TELEVISION. PROFESSIONAL BOARDS: PHARMACY, MEDICAL ETC. |
| <p>QUESTION 5: Do you agree or disagree that California needs to restrict more chemicals and/or compounds in products?</p> | |
| Katie Maynard | Agree. |

DRAFT

| | |
|--|---|
| pine@shocking | |
| Susan Browne Rosenberg | Disagree. |
| Fred Klammt | AGREE. |
| George Dearmin | If it is done rationally, based on sound scientific basis, and truly represents a "real" hazard in normal use situations. |
| Colleen Hunt | AGREE |
| Todd Wirdzek | Disagree. |
| sleethn@alltech1.biz | Agree. |
| Barbara J. Massey | California needs to be more restrictive. |
| Ken Forbes | Disagree - with very few exceptions, such as lead, at the present time. |
| Marilyn Johnson | Yes, there should be restrictions on known hazardous chemicals in products, with a balanced approach of providing incentives to design and offer safer alternatives. |
| Jo Rupert Behm, M.S., RN | Absolutely agree. |
| Carol Massey | No, this should be done at the federal level. |
| Lena Brook | Agree! But also encourage development of SAFER alternatives |
| Jen Jackson | Yes. TSCA has not adequately screened chemicals. Only 4 have been removed from the approved list since the 70s! |
| Lynnette Renfer | AGREE. |
| QUESTION 6: Do you agree or disagree that California lacks sufficient funding to adequately regulate toxics in consumer products? | |
| Katie Maynard | Agree, though I think this should be a priority for the funding we do have. |
| pine@shocking | Agree. |
| Susan Browne Rosenberg | Agree. |
| Fred Klammt | Agree. |
| George Dearmin | I believe adequate funding exists; it just isn't being used for these issues. |
| Colleen Hunt | AGREE |
| Todd Wirdzek | Disagree. |
| sleethn@alltech1.biz | Disagree - we need to look at the front end. |
| Barbara J. Massey | I do not agree that California lacks sufficient funding. Such funding can be obtained. |
| Ken Forbes | I disagree. The state over-regulates some toxics already, such as VOC's and under-regulates others, such as lead. But then the question is should the state be doing this regulation of lead, or should the Feds? I see this Green Chemistry initiative, as being unveiled so far, as the genesis of another bureaucracy that should be pursued at the Federal level with state implementation through existing agencies. |
| Marilyn Johnson | I don't know. |
| Jo Rupert Behm, M.S., RN | Absolutely agree CA lacks adequate funding and regrettably policymakers are swayed from best-practices and preventive public health by chemical, cosmetic, drug special interests and campaign contributions. |
| Carol Massey | Not sure. |

DRAFT

| | |
|---|--|
| Lena Brook | Probably, but the chemical industry is vast in resources and benefits substantially from the lack of regulation. They should be expected to fund new programs in the future. |
| Jen Jackson | Probably. CA should enter into agreements with Canada and the EU to obtain data. In addition, CA could require producers/manufacturers to provide toxicity/risk studies that have been conducted by independent, authorized labs. |
| Lynnette Renfer | AGREE. |
| QUESTION 7: In your view, who is ultimately responsible for the regulation of toxic chemicals in products? | |
| Katie Maynard | Everyone. DTSC should be responsible for setting regulations. |
| pine@shocking | Cal and US EPA. |
| Susan Browne Rosenberg | The EPA, FDA and Ag Dept. |
| Fred Klammt | Manufacturers (management) + designers (scientists) of products |
| George Dearmin | The USEPA and CAL-EPA. |
| Colleen Hunt | FEDERAL GOVERNMENT. |
| Todd Wirdzek | Federal EPA, FDA, and other Federal agencies. |
| sleethn@alltech1.biz | Product manufacturer - with oversight by the regulatory community. |
| Barbara J. Massey | Ultimately, the manufacturer responsible for placing the toxic in the products in the first place is responsible to regulate itself. The US government, the State governments, and local governments are responsible to prevent irresponsible manufacturers from polluting, injuring, maiming, and killing their citizens. |
| Ken Forbes | The Federal Government. |
| Marilyn Johnson | Agencies responsible for the health of people and the environment. |
| Jo Rupert Behm, M.S., RN | |
| Carol Massey | The federal government. |
| Lena Brook | This should be a combined effort of the federal government and the states. But in the absence of federal leadership, CA has a responsibility to protect its communities and to send the right signals to the marketplace. |
| Jen Jackson | The federal government, but we won't get there without the states stepping up, making their own regs and then ultimately the feds adopting them. |
| Lynnette Renfer | FEDERAL GOVERNMENT AGENCIES TO ENSURE NATIONWIDE STANDARDS. |
| QUESTION 8: What is the best way to get toxics out of products? | |
| Katie Maynard | Education of future industry leaders - both undergraduates and graduates in College. |
| pine@shocking | Get industrialist out of Govt. (campaign contributors, lobbyists and appointees). |
| Susan Browne Rosenberg | Stop buying products from China. |
| Fred Klammt | Encourage market forces, not regulate (no command + control). |

DRAFT

| | |
|--|--|
| George Dearmin | Consistent, uniform, and meaningful regulation on all levels of product use (cradle to grave). |
| Colleen Hunt | RESEARCH ALTERNATIVES. |
| Todd Wirdzek | Offer better performing and economically feasible alternatives. |
| sleethn@alltech1.biz | Design in process, regulation of manufacturer use. |
| Barbara J. Massey | Prohibit them in the first place. |
| Ken Forbes | Education and regulation at the source (manufacturers) and at retailers by the Federal Government. A state by state approach will result in a patchwork of laws, confusion, higher product prices, limited availability of product choices and greater size of overall government than necessary to protect consumers. |
| Marilyn Johnson | Design and redesign safer alternatives. |
| Jo Rupert Behm, M.S., RN | |
| Carol Massey | Ban them. |
| Lena Brook | To make products that are safe! |
| Jen Jackson | Require independent screening of chemicals by authorized labs. Those that are found to be toxic, endocrine disrupting or environmental hazards should be initially labeled and then after a grace period, banned from use. The grace period gives producers/formulators time to find an alternative chemical. "New chemicals" should be screened prior to being allowed on the market. |
| Lynnette Renfer | RESEARCH TO FIND NON TOXIC ALTERNATIVES ALONG WITH GOVERNMENT REGULATION. |
| QUESTION 9: As a consumer, who do you feel is most responsible for testing for toxics in products - retailers, distributors, manufacturers or the government? | |
| Katie Maynard | Manufacturers in collaboration and with oversight from the government. Retailers and distributors should be responsible for knowing what is in their products and making sure the products were tested and are sustainably made. |
| pine@shocking | Manufacturers should pay, agencies should test. |
| Susan Browne Rosenberg | Manufacturers. |
| Fred Klammt | Independent 3rd parties, Government. |
| George Dearmin | Any other testing than Government's is potentially "tainted fruit". |
| Colleen Hunt | TO SOME DEGREE ALL HAVE A RESPONSIBILITY, BUT COST SHOULD COME FROM MANUFACTURER. |
| Todd Wirdzek | Manufacturers. |
| sleethn@alltech1.biz | Manufacturer. Government for enforcement activities. |
| Barbara J. Massey | Manufacturers and suppliers to the manufacturers and the government. One cannot be solely responsible. |
| Ken Forbes | Manufacturers primarily and the Federal Government secondarily. |
| Marilyn Johnson | Those who make the products should be responsible. The government can play an oversight role. If you come to my house for dinner, it is my responsibility that you have healthy food to eat that tastes good. |
| Jo Rupert Behm, M.S., RN | |
| Carol Massey | Manufacturers. |
| Lena Brook | Manufacturers and government should develop a testing program with an audit |

DRAFT

| | |
|-----------------|--|
| | process. This should be done in conjunction with consumer advocacy groups. |
| Jen Jackson | Manufacturers. |
| Lynnette Renfer | ALL. |

DRAFT

Attachment D
Key Element: Strengthening Consumer Protection Laws

Industry Questionnaire Response Summary

Question 1: Do you represent industry, government, or a non-governmental organization?

I.S.1: Responders included industry representatives, local government, various trade associations and a consultant.

Question 2: Do you agree that there are consumer exposure risk(s) associated with Chemicals of Concern in consumer products? If so, what entity/entities (e.g. industry, academia, federal and/or state agencies) is/are/should be responsible for identifying the risk(s)?

I.S.2: The majority of responders agreed that there is consumer exposure risk(s) associated with Chemicals of Concern in consumer products. However, there was no consensus regarding what entity/entities is/are/should be responsible for identifying the risk(s). Responses ranged from “All listed entities” to “Industry should identify the risks.” However, one responder noted, “...regulatory programs must be quick to respond to new information and consumer interests, and regulators must address these concerns in a timely manner, in cooperation with stakeholders.” Another responder indicated, “To analyze the associated risk with chemicals of concerns in consumer products, you must consider both the hazardous properties of a chemical and the likelihood of exposure to that chemical.” Finally, another responder wrote, “The manufacturers of formulated consumer products are in the best position to assess the consumer risk associated with exposure to a given product because they are most familiar with the composition, the intended use, the distribution and the level of knowledge and sophistication of the end user.”

Question 3: Are you aware of any standards/permissible levels, established either in statute or regulation, for consumer products related to Chemicals of Concern? Are the standards voluntary or mandatory?

I.S.3: While the majority of the responders were aware of regulatory thresholds for certain Chemicals of Concern in consumer products, only one responder was aware of regulatory thresholds for several Chemicals of Concern. Several responders indicated that the existing standards were mandatory.

Question 4: In your opinion, do you think that the mandatory standards/permissible levels for chemicals of concern in consumer products are enforceable?

DRAFT

I.S.4: The majority of responders indicated that they believe that the mandatory standards/permisible levels for chemicals of concern in consumer products are enforceable. However, one responder noted, "Yes, but not enough enforcement staff and system is rigged against successfully regulating." Another responder indicated, "Yes, provided enforcement is visible, is made public, and actually occurs." Finally, a third responder stated, "Yes. Especially when exposure to infants, children and other sensitive group[s] are the recipients."

Question 5: In your opinion, do you think that the established standards/permisible levels for chemicals of concern in consumer products are based on sound science and are tailored to the consumer exposure risk(s) that they may impose?

I.S.5: Not every responder answered this question. Those that did were evenly split between answering the question either "yes" or "no." One responder wrote, "No, they have no basis in science, detection limits, production limits, existing ASTM or other material standards, or anything else as far as I can tell." While another responder indicated, "Yes, to the extent practicable current standards and regulatory programs take into consideration consumer exposure risks...Therefore, any new program being considered by California, including and especially the Green Chemistry Initiative, must recognize that state-of-the-science is not static and must be robust enough to allow for the timely evaluation, and re-evaluation, of chemicals." Finally, a third responder indicated, "In many cases, an established standard includes arbitrary safety factors, unrealistic worst-case assumptions or over simplified exposure scenarios."

Question 6: From your perspective, is there an adequate enforcement and compliance infrastructure in place (e.g. staff, equipment, lab resources, funds, etc.) for the Chemicals of Concern in consumer products?

I.S.6: The majority of responders do not believe that there is an adequate enforcement and compliance infrastructure in place for the Chemicals of Concern in consumer products. One responder wrote, "However, I do NOT believe that there is adequate enforcement and compliance infrastructure in place for industrial products and therefore it is also probably true for consumer products." Alternatively, a responder who answered "yes" to this question wrote, "Before additional enforcement mechanisms are developed for "chemicals of concern" the agencies should first fully understand their own regulatory authority and that of other jurisdictions, and work with those jurisdictions and the industry on clear guidance and communication of its regulatory objectives."

DRAFT

Question 7: Does an education and outreach program exist (e.g. webpage(s), fact sheets, conferences, etc.) for the regulated industry? If so, do you believe the existing program is effective?

I.S.7: Most responders were aware of the existence of an education and outreach program for the regulated industry, but many went on to say that these efforts were either ineffective or under utilized. One responder wrote, "The education and outreach is available, but under utilized. "

Question 8: Does an education and outreach program exist (e.g. webpage(s), fact sheets, sample school curriculum, media events, press releases, etc.) for the public consumer? If so, do you believe the existing program is effective?

I.S.8: The majority of the responders that answered this question do not believe that there is an adequate education and outreach program for the public consumer. One responder wrote, "No. Most consumers are clueless." Another responder indicated, "Only when there is a problem."

Question 9: Do you think that a level playing field exists for Chemicals of Concern in consumer products? If yes, do you believe the standards/permissible levels for the Chemical of Concern are consistently applied to all uses/products?

I.S.9: The majority of responders do not believe that a level playing field exists for Chemicals of Concern in consumer products. One responder wrote, "No, I believe that is area that will come with much effort and maybe enforcement." Another responder indicated, "Industry is regulated in an inconsistent and piecemeal approach regarding chemicals of concern in products." Finally, a third responder noted, "All chemicals of concern and consumer products have regulatory oversight to ensure their safety. However, the intention for oversight has not always been exercised by regulatory agencies and, at times has been inconsistent."

Question 10: Do you believe that the industry is regulated consistently regarding Chemicals of Concern in consumer products?

I.S.10: The vast majority of responders do not believe that the industry is regulated consistently regarding Chemicals of Concern in consumer products. One responder indicated, "There is no consistency, and no sense, and no way for industry or anyone else to plan. This is a general problem with US chemical policy, not just California chemical policy." Another responder wrote, "No. I believe "the industry" is over-regulated with regard to VOC, aromatic and some chlorinated content in these products and under regulated with regard to lead and other toxic heavy metals of concern."

DRAFT

Attachment E Key Element: Strengthening Consumer Protection Laws

Responses to Industry Questionnaire

| QUESTION 1: Do you represent industry, government, or a non-governmental organization? | |
|---|--|
| Michael Kirschner | Industry |
| Ken Forbes | Yes - Industry. |
| Jerry Munoz | I'm a government rep. |
| sleethn@alltech1.biz | Yes, consult for all. |
| All American Facility Services | Industry |
| IPC - Association Connecting Electronics Industries and the California Circuits Association (CCA) | IPC is a global trade association for the electronic interconnection industry, and represents more than 2,600 member companies around the world, including 347 in California. IPC members manufacture printed circuit boards and electronic assemblies, which are used in a variety of electronic devices including computers, cell phones, pacemakers, and sophisticated missile defense systems. The industry is vital to the U.S. economy, employing more than 350,000 people and exceeding \$44 billion in sales. Although IPC members include electronic giants, sixty percent of IPC members meet the Small Business Administration's definition of "small business." |
| Smart Sonic - Bill Schreiber | We are a cleaning chemical supplier to the Printed Circuit Board Industry. |
| Consumer Specialty Products Association | CSPA is a national nonprofit trade association that represents approximately 250 companies engaged in the formulation, manufacture, distribution and sale of consumer, institutional and commercial products. CSPA member companies manufacture and market a wide range of products, including: cleaning products, disinfectants and sanitizers, candles and air care products, household pesticide products, automotive products used to clean and maintain vehicles, and polishes and floor maintenance products. |
| The Soap and Detergent Association | The Soap and Detergent Association is a 100 plus-member national trade association representing the formulators of soaps, detergents, and general cleaning products used in household, industrial, institutional and commercial settings, and the companies that supply ingredients and packaging for these products. Throughout our 82 year history, sound technical, risk-based research by SDA and its members has demonstrated the benefits of cleaning products and their ingredients, and our long-standing educational programs have provided consumers with credible information on the safe and proper use of these products. The cleaning products industry employs over 30,000 individuals across the United States with annual product shipments topping \$17 billion. |
| Deborah Waite | Industry |
| QUESTION 2: Do you agree that there are consumer exposure risk(s) associated with Chemicals of Concern in consumer products? If so, what entity/entities (e.g. industry, academia, federal and/or state agencies) is/are/should be responsible for identifying the risk(s)? | |

DRAFT

| | |
|---|--|
| Michael Kirschner | Yes. Industry should identify the risks. |
| Ken Forbes | All listed entities, as well as general public input, should be responsible for risk identification. |
| Jerry Munoz | All listed in different responses the main are CalOSHA and Consumer Protection and DTSC. |
| sleethn@alltech1.biz | Industry ultimately responsible. State agencies will have to bear burden for identification & enforcement. |
| All American Facility Services | Yes, I agree. I see the risk associated with these chemicals every day. The use of chemicals that contain these hazardous agents are used in daily cleaning in almost all facilities I visit. In food mfg, our schools and daycares, in government procurement, our recreational facilities, and through out our commercial and industrial fields. I believe the risks have been identified and most end users take precaution. I think it's in the product makers realm of responsibility to disclose the agents in there chemicals but I am out there trying to educated business owners on the alternative products that work. |
| IPC - Association Connecting Electronics Industries and the California Circuits Association (CCA) | There may be the potential of consumer exposure associated with chemicals of concern in products. However, we caution DTSC against looking at only part of the picture, which can lead to inaccurate or misleading conclusions. The mere presence of a chemical of concern in a product does not mean that risk to human health or the environment is inevitable. To analyze the associated risk with chemicals of concerns in consumer products, you must consider both the hazardous properties of a chemical and the likelihood of exposure to that chemical. |
| Smart Sonic - Bill Schreiber | Yes, I agree that there are consumer exposure risks and potential environmental impacts associated with many cleaning chemicals used in various industrial applications. |
| Consumer Specialty Products Association | There are risks associated with all chemicals. State and federal programs have long sought to control these risks and we recognize that many consumers today have heightened concerns with certain chemicals based on new research and/or media attention. This does not necessarily mean all current regulatory structures are broken and should be abandoned for some new regulatory scheme. To the contrary, it highlights that regulatory programs must be quick to respond to new information and consumer interests, and regulators must address these concerns in a timely manner, in cooperation with stakeholders. As the consumer products industry develops and markets products it does so with the intent to meet or exceed safety requirements of all state and federal agencies in the United States and Canada charged with regulating those products, including the California Department of Pesticide Regulation, the California Air resources Board, and other state agencies, U.S. Consumer Product Safety Commission (CPSC), the U.S. Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the U.S. Food and Drug Administration (FDA), Health Canada, and Environment Canada. All of these agencies have an important role on behalf of consumers, as does industry and academia. Industry has a role in developing the data to ensure the safety of ingredients and products and communicating that information to responsible interests, including consumers and regulators. State and federal agencies, with expertise in overall chemical management function share a role in evaluating use and exposure patterns in the context of overall chemical use (which can be information the individual company may not have). Academia is a beneficial resource; as it helps push the leading edge of scientific understanding to determine better methods to understand the fate and effects of chemicals in the marketplace and serve as a resource for the public good, |

DRAFT

| | |
|---|--|
| | and also for regulatory bodies and industrial sectors. Additional identification of risk can be done within this current scope of overlapping authority and should leverage the extensive risk-analysis that is done within each company before a product is brought to market. |
| The Soap and Detergent Association | SDA's members are committed to providing products that are safe and effective when used as intended, and consumers have a right to expect that there will be no unacceptable risks associated with the products they purchase. By and large, there are not unacceptable consumer exposure risks associated with the "Chemicals of Concern" however, the list is ill-defined as several categories included are quite broad and it is unclear what individual chemicals may be included (halogens? other aromatic hydrocarbons? VOCs?). There are a number of state and Federal agencies with responsibilities for identifying risks associated with products and chemicals, and taking regulatory action when risks are unacceptable. In many cases, industry works with Federal or state agencies in developing the assessment of risk for a particular chemical use or exposure. The manufacturers of formulated consumer products are in the best position to assess the consumer risk associated with exposure to a given product because they are most familiar with the composition, the intended use, the distribution and the level of knowledge and sophistication of the end user. |
| Deborah Waite | <p>This appears to be a leading question intended to elicit a pre-determined response. That said, I feel, that in today's litigious society, even the worst companies are smart enough to use only well studied chemicals. The manufacturers are responsible for the safety of products they put on the market.</p> <p>I am quite confident that academia will continue to study this area given the public interest continually being generated. Therefore, it is not a good use of resources to have the state government agencies involved, especially given the over-burdened state budget.</p> |
| QUESTION 3: Are you aware of any standards/permissible levels, established either in statute or regulation, for consumer products related to Chemicals of Concern? Are the standards voluntary or mandatory? | |
| Michael Kirschner | Mandatory standards: California Electronic Waste Recycling Act specifies permissible levels in homogeneous levels for 4 heavy metals in certain electronics. AB1109, passed last year, likewise does in lighting. |
| Ken Forbes | I am aware of standard and permissible levels, specifically of VOC content as well as limits other chemical content in consumer products. Levels of VOC in many Consumer Products are mandatory. Others may not, or should not, yet be regulated. |
| Jerry Munoz | No, not aware. |
| sleethn@alltech1.biz | Yes. Mandatory - But prop 65 & CEQA need to be updated at the least. |
| All American Facility Services | It is common for products to be flammable or to contain warnings like, use in ventilated areas. Safe handling of these products is voluntary but the warnings are mandatory. |

DRAFT

| | |
|---|---|
| IPC - Association Connecting Electronics Industries and the California Circuits Association (CCA) | Since US EPA is already engaged in a trilateral agreement between Canada, the U.S. and Mexico to assess and manage chemicals, EPA should be responsible for identifying any risks associated with chemicals of concern. Under ChAMP (Chemical Assessment and Management Program), EPA will screen, prioritize, and assess nearly all chemicals in U.S. commerce. EPA will develop hazard characterizations, risk characterizations, and risk-based decisions on how to manage these chemicals. EPA has already committed a significant amount of resources to meeting its ChAMP commitments. DTSC cannot justify expending the limited funding available to California to duplicate efforts already undertaken by the U.S. government. We are concerned that California's Green Chemistry Initiative could undermine the existing ChAMP Program. |
| Smart Sonic - Bill Schreiber | The South Coast AirQuality Management District (SCAQMD) has established the Clean Air Solventprogram to determine the presence and/or quantities of many hazardouschemicals such as VOCs. The main problem with this program is that it onlyevaluates the virgin product and does not evaluate the cleaning applicationfor hazardous substances or environmental impact. For example, if achemical is certified as a "Clean Air Solvent" and that chemical is used toclean solder paste containing poisonous lead and other heavy metals, thecleaning process becomes hazardous and the waste stream becomes hazardousand environmentally problematic.The EPA has the Environmental Technology Verification (ETV) Program which isexcellent, but under funded. The ETV evaluates complete processes from thevirgin chemical to the waste stream. |
| Consumer Specialty Products Association | <p>All of the stipulated "chemicals of concern" (lead, mercury, cadmium, hexavalent chromium, antimony, arsenic, selenium, barium, halogens and other aromatic hydrocarbons, pesticides, PCBs, and VOCs) are regulated at some level. Specifically, these chemicals are regulated for exposure by U.S. Consumer Product Safety Commission (CPSC), the U.S. Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the California Department of Pesticide Regulation. Standards and permissible exposure limits exist for nearly all of these chemicals based upon their presence in specific product categories. Permissible Exposure Levels (PELs) are occupational standards developed for workplace exposures and, for the most part, not applicable to most consumer products sold at retail for household use. Other regulatory standards deal with consumer products sold at retail (e.g., CPSC, EPA, etc.). No standards, expressed in regulatory statutes, are voluntary in the sense that they can be ignored. For example the U.S. Department of Agriculture sets standards for the presence of arsenic in foods; while the U.S. EPA set standards for the presence of arsenic in drinking water. Likewise, the CPSC regulates and sets standards for the presence of lead in toys, OSHA sets standards for lead in products used by workers, and U.S. EPA sets standards for the presence of lead in drinking water and other products. Violations are subject to enforcement actions of the agency. Below is a summary listing of the relevant agencies that regulate the specified "chemicals of concern".</p> <p>Lead – U.S. EPA regulates environmental lead through seven principal statutes; TSCA, RCRA, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), CAA, the Clean Water Act (CWA), SDWA and the Emergency Planning and Community Right to Know Act (EPCRA).</p> <p>Mercury – U.S. EPA regulates mercury under the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act, EPA has the</p> |

DRAFT

| | |
|--|--|
| | <p>responsibility to develop regulations to control some mercury emissions to air, water, or from wastes and products.</p> <p>Cadmium - U.S. EPA regulates cadmium under the Safe Drinking Water Act, which requires EPA to determine safe levels of chemicals in drinking water which do or may cause health problems.</p> <p>Hexavalent chromium - The Occupational Safety and Health Administration (OSHA) regulates hexavalent chromium for workplaces and requires sets permissible exposure limits for workplaces. All industries must comply with the permissible exposure limit of 5 micrograms of hexavalent chromium per cubic meter of air (5 [micro]g/m³) for an 8-hour TWA.</p> <p>Antimony - U.S. EPA regulates antimony under the Safe Drinking Water Act, which requires EPA to determine safe levels of chemicals in drinking water which do or may cause health problems.</p> <p>Arsenic - U.S. EPA regulates arsenic under the Safe Drinking Water Act, which requires EPA to determine safe levels of chemicals in drinking water which do or may cause health problems.</p> <p>Selenium - U.S. EPA regulates selenium under the Safe Drinking Water Act, which requires EPA to determine safe levels of chemicals in drinking water which do or may cause health problems. The U.S. Food and Drug Administration also regulates selenium under the Agriculture, Rural Development, FDA, and Related Agencies Appropriations Act of 1994 and the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 and sets standards for the use of selenium in agricultural products and livestock supplements.</p> <p>Barium - U.S. EPA regulates barium under the Safe Drinking Water Act, which requires EPA to determine safe levels of chemicals in drinking water which do or may cause health problems.</p> <p>Halogens and other aromatic hydrocarbons – The California Air Resources Board regulates the emissions of aromatic hydrocarbons from various sources.</p> <p>Pesticides – regulated and registered by U.S. EPA, the California Department of Pesticide Regulation, and pesticide regulatory agencies in all 50-states.</p> <p>PCBs - U.S. EPA regulates PCBs under the Toxic Substances Control Act (TSCA). TSCA bans the manufacture, processing, use and distribution in commerce of PCBs. TSCA gives EPA the authority to develop, implement and enforce regulations concerning the use, manufacture, cleanup and disposal of PCBs.</p> <p>VOCs – Regulated by the California Air Resources Board, U.S. EPA, and more than 13 states in the East Coast and the Midwest</p> |
|--|--|

DRAFT

| | |
|---|---|
| The Soap and Detergent Association | For VOCs, the California Air Resources Board has been developing mandatory standards for VOCs in consumer products for more than a decade. The U.S. EPA Office of Pesticide Programs (OPP) is responsible for determining the acceptable pesticide residues on foods under the Federal Food Drug and Cosmetic Act (FFDCA); those residue levels are mandatory. EPA OPP and the California Department of Pesticide Regulation may regulate the level and use of pesticides in pesticide products. Metal residue limits (e.g., lead, arsenic, mercury) are common for food additives and color additives regulated by the U.S. Food and Drug Administration under FFDCA. |
| Deborah Waite | <p>I note that you have the term "Chemicals of Concern" capitalized. I think it would be very helpful to include a definition of this term in future mailings seeking input. For the record, my answers to this questionnaire are based on what I am guessing you mean by "Chemicals of Concern."</p> <p>California Prop 65 is the strictest standard in the world for regulating carcinogens and reproductive toxins in all products, consumer or otherwise. I feel Prop 65 provides Californians with the best regulatory scheme available anywhere in the world and that it is adequate to address consumer concerns.</p> |
| QUESTION 4: In your opinion, do you think that the mandatory standards/permissible levels for Chemicals of Concern in consumer products are enforceable? | |
| Michael Kirschner | Yes, provided enforcement is visible, is made public, and actually occurs. There are methods for both grossly and accurately determining concentration levels of certain elements and substances in products. |
| Ken Forbes | Maybe - Random sampling and testing of products goes far to assist enforcement. Audit of suppliers of high risk products will also help. |
| Jerry Munoz | Yes. Especially when exposure to infants, children and other sensitive group are the recipients. |
| sleethn@alltech1.biz | Yes, but not enough enforcement staff and system is rigged against successfully regulating. |
| All American Facility Services | Yes. |
| IPC - Association Connecting Electronics Industries and the California Circuits Association (CCA) | <p>The European Union RoHS banned the use of lead, cadmium, mercury, hexavalent chromium and both polybrominated biphenyl (PBB) and polybrominated diphenyl ether (PBDE) flame retardants in electrical and electronic equipment as of July 1, 2006. Shortly afterwards, California followed suit with its own law (California RoHS) modeled after the EU. The EU's decision to restrict these chemicals was not based on a complete examination of risk, but instead was based solely on the potential hazards of lead. The exposure element of a risk analysis was never studied. In order to determine risk, both the hazard and exposure of a chemical must be taken into account. In addition to failing to conduct a risk analysis, the EU also failed to conduct a life-cycle assessment of the health and environmental effects of the potential substitutes. As a result, while enormous costs were incurred, the public did not realize any net environmental or human health benefit from the regulation.</p> <p>Review of the U.S. Environmental Protection Agency (EPA) Lead-Free Solder project illuminates the environmental trade-offs inherent in material substitutions and the benefits of conducting life-cycle analysis. The study evaluated the environmental impacts of tin-lead solder versus lead-free</p> |

DRAFT

| | |
|---|--|
| | alternative solders. Because tin-silver-copper solder in electronics requires higher processing temperatures than tin-lead solder tens of thousands of solder machines worldwide now operate at higher temperature. The higher operating temperatures required for the manufacture of lead-free electronics has resulted in significantly higher energy usage during manufacturing. The increased energy use associated with manufacturing lead-free electronics was projected by the study to cause higher air pollution, acid rain, stream eutrophication, and global warming impacts than the tin-lead soldered electronics. EPA's study serves as an important reminder that there are environmental trade-offs when substituting one substance for another. |
| Smart Sonic - Bill Schreiber | If not enforceable, the chemical levels should be, at least, documented and published in a form that the everyday user can understand. For example, it is not currently required to disclose VOC content on a Material Safety Data Sheet (MSDS). Only "Vapor Pressure" is required. Yet, the media and regulating agencies continue to refer to the hazards of "VOCs". Most chemical users are not familiar with the association or conversion of "Vapor Pressure" to "VOCs" and therefore often think that if VOCs are not disclosed in the MSDS, the chemical must be VOC-free. Many chemical manufacturers rely on this ignorance and market their VOC-containing chemicals as "environmentally friendly". VOCs and other substances of concern should be disclosed on the MSDS and product containers. |
| Consumer Specialty Products Association | Yes, by definition regulatory standards and permissible exposure limits have the force of law and can be enforced by the relevant agency or legal proceedings. We are unaware of a mandatory standard that that is not enforceable. |
| The Soap and Detergent Association | Mandatory standards are absolutely enforceable. |
| Deborah Waite | Yes. Very much so. |
| QUESTION 5: In your opinion, do you think that the established standards/permissible levels for chemicals of concern in consumer products are based on sound science and are tailored to the consumer exposure risk(s) that they may impose? | |
| Michael Kirschner | No, they have no basis in science, detection limits, production limits, existing ASTM or other material standards, or anything else as far as I can tell. |
| Ken Forbes | No. VOC regulation of automotive aerosol cleaners and similar non-aerosol cleaners are mandated ridiculously low limits for the extremely small contribution of all greenhouse gas emissions in California and VOC regulation of consumer products in general is more politically motivated than science based. The proposed alternative water-based, "green" cleaners are NOT as effective in removing oils and greases despite some studies, such as the uncontrolled Wolf report that states to the contrary. |
| Jerry Munoz | No comment. |
| sleethn@alltech1.biz | Sound science, though outdated and permissible risk is often left to the eye of the interested party. |
| All American Facility Services | I do but science has come a long way since these products were introduced in the market place. The consumer exposure to risk no longer has to exist in most areas of concern. |

DRAFT

| | |
|--|--|
| IPC - Association Connecting Electronics Industries and the California Circuits Association (CCA) | It is very difficult, costly and resource-intensive to develop the test data necessary for enforcement of chemicals of concern in products. We are concerned that the DTSC may use X-ray fluorescence spectroscopy (XRF) as an inexpensive alternative to appropriate testing. It is important to note that the XRF is merely a screening tool and does not produce reliable test results suitable for enforcement action. These devices can produce false positives when testing materials for banned substances and cannot discern critical differences between similar substances. Due to the high cost and resources necessary to conduct testing for chemicals of concern in products, we believe that enforcement may be very challenging. |
| Smart Sonic - Bill Schreiber | My company only deals with industrial products. |
| Consumer Specialty Products Association | Yes, to the extent practicable current standards and regulatory programs take into consideration consumer exposure risks. In some instances standards need to provide flexible controls based on new data and scientific method advancements to assess risk and hazard; but the limiting factor is often resourcing constraints within the regulatory agencies themselves to maintain currency. Therefore, any new program being considered by California, including and especially the Green Chemistry Initiative, must recognize that state-of-the-science is not static and must be robust enough to allow for the timely evaluation, and re-evaluation, of chemicals. |
| The Soap and Detergent Association | In many cases, an established standard includes arbitrary safety factors, unrealistic worst-case assumptions or over simplified exposure scenarios. The Soap and Detergent Association has developed a publication entitled Exposure and Risk Screening Methods for Consumer Product Ingredients which presents methodologies and specific consumer exposure information that can be used for screening-level risk assessments of environmental and repeated human exposures to High Production Volume (HPV) chemicals. Many of these chemicals are utilized through the manufacturing and use of consumer products, mainly laundry, cleaning, and personal care products. The intended audience of this document is chemical risk assessors within governmental agencies, businesses and stakeholder groups who have some experience in the area of consumer products exposure and risk assessment and have responsibility for prioritizing chemical safety reviews of substances. This document will also be useful for assessors involved in chemical risk management work as a tool to improve the efficiency of resource utilization. This document (available in Adobe Acrobat format) can be downloaded at: http://www.cleaning101.com |
| Deborah Waite | Yes. |
| QUESTION 6: From your perspective, is there an adequate enforcement and compliance infrastructure in place (e.g. staff, equipment, lab resources, funds, etc.) for the Chemicals of Concern in consumer products? | |
| Michael Kirschner | No. |
| Ken Forbes | No. Set up the labs but keep the mid and high level administration low. How many levels of bureaucracy do we need? Very little. A product either exceeds a set limit or it doesn't. Period. We don't need SCAQMD size and scope for this program. |
| Jerry Munoz | The infrastructure is there for industrial and commercial facilities but not for the retail end. |
| sleethn@alltech1.biz | No. |

DRAFT

| | |
|--|---|
| All American Facility Services | Yes, I think the EPA and OSHA are doing a wonderful job educating and getting the word out to consumers and purchasers on the hazards of using and storing these chemicals. |
| IPC - Association Connecting Electronics Industries and the California Circuits Association (CCA) | <p>To put it simply, hazard does not equal risk. We emphasize the importance of risk-based decision-making when evaluating chemicals of concern in consumer products. Too often government has succumbed to unfounded public fears about chemicals and produced regulations like California RoHS, which have questionable benefits. We urge establishment of risk-based standards that are protective of the human health and the environment.</p> <p>In a chemical risk analysis, risk is seen as a function of the intrinsic hazards possessed by the chemical and the likelihood to which someone or something could be exposed to those hazards. This is one of the most important concepts to remember when discussing chemical safety. Even if a chemical has hazardous properties, that does not mean it is likely to cause harm when used in a product because exposure is unlikely. We urge DTSC to follow a scientific risk-based approach for any chemical regulation.</p> |
| Smart Sonic - Bill Schreiber | My company only deals with industrial products. However, I do NOT believe that there is adequate enforcement and compliance infrastructure in place for industrial products and therefore it is also probably true for consumer products. |
| Consumer Specialty Products Association | Yes. Before additional enforcement mechanisms are developed for "chemicals of concern" the agencies should first fully understand their own regulatory authority and that of other jurisdictions, and work with those jurisdictions and the industry on clear guidance and communication of its regulatory objectives. |
| The Soap and Detergent Association | Yes. |
| Deborah Waite | No. But California's budget won't allow more. |
| QUESTION 7: Does an education and outreach program exist (e.g. webpage(s), fact sheets, conferences, etc.) for the regulated industry? If so, do you believe the existing program is effective? | |
| Michael Kirschner | The EWRA has a web page, listserv, meetings, etc. which seem to be adequate. |
| Ken Forbes | Yes there is an education and outreach program for those regulated. No I don't think it is effective. Very little information is ever obtained by me or my company in California from agency websites and fact sheets put out for industry. This is wasted dollars in my opinion. |
| Jerry Munoz | Not aware. |
| sleethn@alltech1.biz | No, and no. |
| All American Facility Services | I do believe that our regulated industry does try to educate the end user on health and safety. Education is an effective tool in exposing the risks associated with these products. |
| IPC - Association Connecting Electronics Industries and the California Circuits Association (CCA) | Due to the prohibitively expensive testing costs and manpower necessary for enforcement of chemicals of concern, we are concerned that there is inadequate enforcement and compliance infrastructure in place in California. |

DRAFT

| | |
|--|--|
| Smart Sonic - Bill Schreiber | The education and outreach is available, but under utilized. It would be very easy for every manufacture to post answers to a standard list of questions provided by the DTSC. Such as: Does this product contain VOCs? Does this product contain mercury? Etc |
| Consumer Specialty Products Association | For many chemicals and products, there are adequate resources for industry to determine how to comply and exceed standard; but particularly for small businesses additional resources may be needed to provide uniformity in communicating how to comply with standards across different levels of government (i.e. international, national, state, and local) . Communication of consumer safety information is also increasingly an objective of most companies so providing consistent information relative to identified chemicals and products is probably a mutually agreeable objective of both government and industry. |
| The Soap and Detergent Association | Most Federal regulatory programs have a substantial amount of guidance associated with achieving compliance by industry. These programs and activities are most effective for larger companies; however, compliance is often difficult for small businesses that do not have a large staff let alone specialists in regulatory affairs. Similarly, small companies may have the most difficulty in achieving regulatory compliance. Existing government outreach programs are for the most part effective, but additional assistance for small businesses to achieve compliance would improve products and reduce risks. |
| Deborah Waite | Yes - the education and outreach programs are extensive and, I believe, effective for those who choose to utilize them. |
| QUESTION 8: Does an education and outreach program exist (e.g. webpage(s), fact sheets, sample school curriculum, media events, press releases, etc.) for the public consumer? If so, do you believe the existing program is effective? | |
| Michael Kirschner | No. Most consumers are clueless. |
| Ken Forbes | Yes - also wasted dollars in my opinion. Stay out of the media and schools with green propaganda that often times is slanted against responsible industry, overly conservative in nature and unscientific in content. The role of government in education at this level should be extremely limited. |
| Jerry Munoz | Only when there is a problem. |
| sleethn@alltech1.biz | No, and no. |
| All American Facility Services | It helps the consumer take precaution when using the products and that is effective in preventing injury. But why use a product like that at all? |
| IPC - Association Connecting Electronics Industries and the California Circuits Association (CCA) | The California Legislature has increasingly sought to address public concerns and fears about the environmental and human health impact of consumer products through legislation and regulation. Often the driver behind these legislative and regulatory initiatives is not science or rational analysis. A public outreach campaign is critical to inform the general public about the difference between hazard and risk. The outreach campaign should emphasize the fact that hazard does not equal risk. The likelihood of exposure to those hazards is an important component of risk that must be conveyed to the public. By educating the public, the government can allay fears on chemicals in products without passing unnecessary regulations. An educated public can then support legislation focused on the chemicals that pose a genuine risk to the environment or human health. |
| Smart Sonic - Bill Schreiber | See number 7 |

DRAFT

| | |
|--|---|
| Consumer Specialty Products Association | <p>Yes, nearly all industries have information related to education and outreach for their products. CSPA has developed consumer education websites and campaigns discussing the appropriate use, storage and disposal of our members' products. Please see:</p> <ul style="list-style-type: none"> o Pest Management Products: http://www.aboutbugs.com o Air Care Products: http://www.aboutaircare.com o Aerosols Packaged Products: http://www.aboutaerosols.com o Antimicrobial Products: http://www.aboutgerms.com o Cleaning Products: http://www.aboutcleaningproducts.com o Discussion of the need for valid science in policy discussions: http://www.validscience.com |
| The Soap and Detergent Association | <p>There are a lot of materials available from regulatory agencies, but it requires consumers to be engaged and to seek out particular programs. Government agencies typically do not have large budgets to publicize their programs. Similarly, there are sector-specific and product-specific education and outreach programs sponsored by industry and individual companies. For example, The Soap and Detergent Association has education and outreach programs dealing with hand hygiene, the proper use of cleaning products, the environmental safety of cleaning product chemicals, product stewardship and the like which are available on our website (http://www.cleaning101.com).</p> |
| Deborah Waite | <p>Yes - education and outreach programs do exist. I believe they are becoming more and more effective as consumers become more internet savvy.</p> |
| <p>QUESTION 9: Do you think that a level playing field exists for Chemicals of Concern in consumer products? If yes, do you believe the standards/permissible levels for the Chemical of Concern are consistently applied to all uses/products?</p> | |
| Michael Kirschner | <p>No. Chemicals of concern are picked based on whichever legislation gets passed, not on an analysis of merit, impact, or degree of problem.</p> |
| Ken Forbes | <p>No. The government and NGO so-called environmental interest group have far too much input and authority. No standards and levels are not consistently applied.</p> |
| Jerry Munoz | <p>No, I believe that is area that will come with much effort and maybe enforcement.</p> |
| sleethn@alltech1.biz | <p>No, and no.</p> |
| All American Facility Services | <p>Yes, I believe the manufactures of these products test and apply the industry standards.</p> |
| IPC - Association Connecting Electronics Industries and the California Circuits Association (CCA) | <p>Industry is regulated in an inconsistent and piecemeal approach regarding chemicals of concern in products. Regulation is rarely based on science or a risk evaluation. Legislators usually succumb to unfounded public fears instead of scientific data when passing laws to ban chemicals. Sound science and an approach that evaluates risks versus benefits should form the foundation for any regulatory structure adopted by California. The process must also give due consideration to the economic and societal needs of all Californians while also leaving California businesses the flexibility to implement innovative, cost-effective solutions that promote business objectives.</p> |
| Smart Sonic - Bill Schreiber | <p>No, for industrial products and therefore probably no for consumer products.</p> |

DRAFT

| | |
|---|--|
| Consumer Specialty Products Association | <p>Clarification is needed on this question. All chemicals of concern and consumer products have regulatory oversight to ensure their safety. However, the intention for oversight has not always been exercised by regulatory agencies and, at times has been inconsistent.</p> <p>However it is important to note that our industry does not ignore laws because they believe them to be insufficient or not enforceable and we follow and exceed all laws and regulations. Additionally our industry bases its use of ingredients on the preponderance of scientific safety data.</p> |
| The Soap and Detergent Association | SDA believes there is a "level playing" field when it comes to the regulation of Chemicals of Concern in consumer product however we also see criticism against certain chemicals by activists without any scientific basis for that criticism. We are concerned that the bias of activists may influence regulators to make poor decisions regarding chemicals management. |
| Deborah Waite | This appears to be another leading question seeking a pre-determined answer. I do not understand what you mean by "level playing field", but it seems to infer that it isn't. I believe the standards/permissible levels are consistently applied under the Prop 65 infrastructure. |
| QUESTION 10: Do you believe that the industry is regulated consistently regarding Chemicals of Concern in consumer products? | |
| Michael Kirschner | No; there is no evidence that any sort of pareto analysis has been done to identify the most egregious problems, nor those that would have the biggest positive impact if addressed. What is addressed is based on the hot topic of the day and what legislation passes. There is no consistency, and no sense, and no way for industry or anyone else to plan. This is a general problem with US chemical policy, not just California chemical policy. |
| Ken Forbes | No. I believe "the industry" is over-regulated with regard to VOC, aromatic and some chlorinated content in these products and under regulated with regard to lead and other toxic heavy metals of concern. |
| Jerry Munoz | No, I believe that is area that will come with much effort and maybe enforcement. |
| sleethn@alltech1.biz | No. |
| All American Facility Services | Yes. |
| IPC - Association Connecting Electronics Industries and the California Circuits Association (CCA) | |
| Smart Sonic - Bill Schreiber | No. |
| Consumer Specialty Products Association | Federal, state, and local agencies have clear oversight authority for chemicals of concern in various phases of their life-cycle; however, this authority may not always be consistently applied. Before additional regulatory mechanisms are developed for "chemicals of concern" agencies should first fully understand how to leverage their own regulatory authority and that of other jurisdictions, and work with those jurisdictions and the industry on advancing consistent regulatory objectives. |

DRAFT

| | |
|------------------------------------|--|
| The Soap and Detergent Association | SDA's concern is not that the Chemicals of Concern are regulated consistently, but that they are regulated appropriately based on the risks they pose to consumers as a function of their hazard profile, use and level of exposure. Risks should be minimized, but risk reduction should not occur without consideration of beneficial uses and costs associated with minimization. Risk reduction should not occur to the point of diminishing return. |
| Deborah Waite | Yes I do. |

Attachment F
Key Element: Strengthening Consumer Protection Laws

Foundational Questionnaire Response Summary

Question 1: How big should the regulated universe be? All consumer products or only those that contain chemicals of concern?

F.S.1: The majority of responders indicated that the regulated universe should be confined to only those products that contain chemicals of concern. One responder wrote, "The regulated universe for consumer product regulation in this Green Chemistry initiative with the California DTSC should be only for those products that contain chemicals of concern. Other products can be regulated if additional chemicals of concern are added to the existing list or if other products are suspected of containing existing chemicals of concern. It is only reasonable to start this project with a limited scope because all consumer products do not need regulating of chemical content." Another responder wrote, "Anything that will limit the potentially negative economic impact would be welcome. Therefore, I think that limiting the scope is good, but the problem then remains of identifying what will be examined - or from the perspective of the manufacturer/user, whose ox is gored."

Question 2: What attributes would make the current system more effective?
Please provide your perspective on:

- Increased consumer awareness of existing laws?
- Enhanced enforcement authority?
- Improved coordination among existing consumer protection agencies?

F.S.2: A slight majority of responders indicated that increased consumer awareness of existing laws would make the current system more effective. One responder indicated, "This should help. After all, people are not dropping down dead left and right currently, but education should be education and not propaganda or alarming data that people might take out of context and be overly concerned about." Another responder wrote, "Increased consumer awareness of existing laws? It is not consumer awareness regarding the laws - it is consumer awareness around what is in products. Focus on the market drivers."

There was no clear consensus response to whether enhanced enforcement authority would make the current system more effective. The responders who answered this question were generally split on this issue. One responder wrote, "Beggars the questions; why is it not enforced now?" Another responder wrote, "For more problematic chemicals and products enforcement is necessary to give any law 'teeth'. If there is a law, there

DRAFT

should be adequate resources to ensure it is followed. Market incentives are preferable.”

Question 3: If we were to develop a new regulatory model, what would it consist of?
How to target Education and Outreach for:

- Consumer?
- Industry?

What kind of Enforcement Tools?

Should the Framework be flexible to add additional:

- Products?
- Standards for hazardous products in commerce?
- Specific regulatory thresholds for each product?
- Have a single consumer product compliance and enforcement agency?

F.S.3: The responders were in general agreement for the need to target the consumer and industry for better education and outreach. One wrote, “A great need for usable information about toxics. Restricting chemicals is very difficult and subject numerous scientific and legal challenges. If the information on chemicals of concern and alternatives can be presented to consumer in the products for which the consumer recognizes, I expect they will drive the market.”

Only a few responders addressed the question concerning enforcement tools. One responder wrote, “Incentives for early responders/leaders in the market. Marketing recognition might be a significant 'carrot'. Let consumers 'vote' with their wallets/purses.” Another responder indicated, “...product bans and, if necessary, chemical bans with penalties...” A third responder wrote, “And if it is not enforced now, how will additional regulations serve to diminish that situation.” Lastly, another responder indicated, “Make sure that what is on the books now is working adequately, before multiplication of more laws/regulations/bureaucracy.”

The questions regarding the flexibility of a new regulatory framework were only directly addressed by a few responders. However, those that did answer all the questions generally responded in the affirmative. One responder wrote:

- Products? Yes absolutely.
- Standards for hazardous products in commerce? Yes, absolutely.
- Specific regulatory thresholds for each product? Everything should be relative and with incentive and drivers to continually improve. Thresholds set today can be outdated tomorrow, and changing the laws are onerous and resource depleting. A more 'active' or 'alive' system should be used in today's dynamic world.

DRAFT

Another responder indicated:

- Products? Important that we do not stifle innovation through increases in product development costs, thereby depriving consumers more efficacious, lower-cost alternatives.
- Standards for hazardous products in commerce? We have watchdogs in place for shipment, labeling, etc. Ensure that they have the resources to do their job adequately.
- Specific regulatory thresholds for each product? A multiplicity of laws/regulations will be burdensome to manufacturers/distributors; will likely contribute to sensory overload to the consumers (thereby lowering his/her attention to specific products with higher risk). Many consumers do not read the product labels now provided.”

The majority of responders either agreed, or were not opposed, to the concept of a single consumer product compliance and enforcement agency. One responder wrote “Any new regulatory model would need to replace existing agencies, rather than be in addition to. Another responder indicated “If that makes sense and is necessary.”

DRAFT

Attachment G Key Element: Strengthening Consumer Protection Laws

Responses to Consumer Protection Foundational Questions

| | |
|---|---|
| QUESTION 1: How big should the regulated universe be? All consumer products or only those that contain chemicals of concern? | |
| Todd Wirdzek buczekm@aol.com | Nationwide rather than state by state. Only chemicals of concern. |
| Ken Forbes | Chemicals of Concern - but how to define The regulated universe for consumer product regulation in this Green Chemistry initiative with the California DTSC should be only for those products that contain chemicals of concern. Other products can be regulated if additional chemicals of concern are added to the existing list or if other products are suspected of containing existing chemicals of concern. It is only reasonable to start this project with a limited scope because all consumer products do not need regulating of chemical content. Therefore in this instance, as with most regulation in general, a limited approach by government from the beginning makes the most sense. It is extremely difficult to reduce government reach once sweeping authority is granted. Such authority is not necessary here and would add excessive cost and unwarranted size to the proposed program. |
| Bob Davenport | Anything that will limit the potentially negative economic impact would be welcome. Therefore, I think that limiting the scope is good, but the problem then remains of identifying what will be examined - or from the perspective of the manufacturer/user, whose ox is gored. |
| Maria Peeler | All consumer products should be regulated, and the criteria should include characteristics of the materials, so nanomaterials are included under the context of reactivity and other characteristics which you do not match that of the same chemicals(s) in the bulk. |
| Cayce Warf | Prioritize chemicals of concern by (risk x exposure) criterion |
| Marilyn Johnson | Due to the changing nature of information and products, there should be a base level of requirement for all products, and a tiered approach as the level of concern increases. Innovation towards more benign design should be rewarded, and provided incentives. Less regulation for more benign products and increased regulation for more problematic chemicals. This will drive innovation and the market will begin to prefer benign. |
| Carol Massey | Only those that contain chemicals of concern. |
| Deborah Waite | The regulated universe should be determined by Prop 65 and/or CARB. |
| Question 2: What attributes would make the current system more effective? Please provide your perspective on: <ul style="list-style-type: none"> - Increased consumer awareness of existing laws? - Enhanced enforcement authority? - Improved coordination among existing consumer protection agencies? | |
| Todd Wirdzek buczekm@aol.com | Yes. Yes. Yes. Accountability by the importer of record AND the retailer, either or both can be fined as appropriate |

DRAFT

| | |
|-----------------|--|
| Ken Forbes | |
| Bob Davenport | <p>This should help. After all, people are not dropping down dead left and right currently, but education should be education and not propaganda or alarming data that people might take out of context and be overly concerned about. Begs the questions; why is it not enforced now? And if it is not enforced now, how will additional regulations serve to diminish that situation. If the coordination does not call for a third agency to oversee the two, yes. But this should lead to streamlining rather than bureaucracy bloating.</p> |
| Maria Peeler | <p>Increased consumer awareness of existing laws? Marginally effective or none.</p> <p>Enhanced enforcement authority? Potentially larger effectiveness.</p> <p>Improved coordination among existing consumer protection agencies? Potentially larger effectiveness, but in reality all three are needed. All require, first and foremost complete product LCA data</p> |
| Cayce Warf | <p>Make sure that what is on the books now is working adequately, before multiplication of more laws/regulations/bureaucracy</p> |
| Marilyn Johnson | <p>Increased consumer awareness of existing laws? It is not consumer awareness regarding the laws - it is consumer awareness around what is in products. Focus on the market drivers.</p> <p>Enhanced enforcement authority? For more problematic chemicals and products enforcement is necessary to give any law 'teeth'. If there is a law, there should be adequate resources to ensure it is followed. Market incentives are preferable.</p> <p>Improved coordination among existing consumer protection agencies? Yes. Again, it is education and options for consumers to allow them to market select preferable products.</p> |
| Carol Massey | <p>. Increased consumer awareness of existing laws? Yes, definitely</p> <p>. Enhanced enforcement authority? Not sure.</p> <p>. Improved coordination among existing consumer protection agencies? Yes!</p> |
| Deborah Waite | <p>Get rid of bounty hunter provision; utilize current CARB staff to monitor products and issue violations.</p> <p>increased consumer awareness of existing laws? Not necessary.</p> <p>Enhanced enforcement authority? Not necessary.</p> <p>Improved coordination among existing consumer protection agencies? That's always a good idea - but I don't want to see more state resources drained. Need to make program self-sustaining - have violations pay for enforcement.</p> |

DRAFT

| | |
|---|--|
| <p>QUESTION 3: If we were to develop a new regulatory model, what would it consist of?</p> <p>How to target Education and Outreach for:</p> <ul style="list-style-type: none"> - Consumer? - Industry? <p>What kind of Enforcement Tools?</p> <p>Should the Framework be flexible to add additional:</p> <ul style="list-style-type: none"> - Products? - Standards for hazardous products in commerce? - Specific regulatory thresholds for each product? - Have a single consumer product compliance and enforcement agency? | |
| Todd Wirdzek | <p>Any new regulatory model would need to replace existing agencies, rather than be in addition to.</p> <p>Handouts/literature at point-of-sale.</p> <p>Through industry-specific associations, affiliations, and groups.</p> <p>No answer regarding enforcement</p> <p>Yes.</p> <p>Yes.</p> <p>Yes.</p> <p>Yes.</p> |
| buczekm@aol.com | <p>A great need for usable information about toxics. Restricting chemicals is very difficult and subject numerous scientific and legal challenges. If the information on chemicals of concern and alternatives can be presented to consumer in the products for which the consumer recognizes, I expect they will drive the market.</p> |
| Ken Forbes | |
| Bob Davenport | <p>Only limited due to the ability of the consumer to process such information; Yes, let industry have reasonable guidelines and let them come up with the solution; Appropriately set ones. Ones that allow for remediation without economic dislocation; This is vague. You mean new chemicals that come into use into consumer products? If so, then yes. But some arenas of use should probably not be as subject to regulation as others - this being a factor of public exposure; Set a reasonable one and stick with it unless it's totally erroneous to start (and that should be very exceptional if this process is done in a reasonable way to start with); Maybe; See above on creating bureaucracies.</p> |
| Maria Peeler | <p>How to target Education and Outreach for:</p> <ul style="list-style-type: none"> - Consumer? yes - Industry? yes <p>What kind of Enforcement Tools? product bans and, if necessary, chemical bans with penalties of registration as business, etc. for repeated offenses. This would include sale and purchase.</p> <p>Should the Framework be flexible to add additional:</p> <ul style="list-style-type: none"> - Products? yes - Standards for hazardous products in commerce? yes - Specific regulatory thresholds for each product? yes - Have a single consumer product compliance and enforcement agency? yes |

DRAFT

| | |
|-----------------|---|
| Cayce Warf | <p>What kind of Enforcement Tools? Incentives for early responders/leaders in the market. Marketing recognition might be a significant 'carrot'. Let consumers 'vote' with their wallets/purses.</p> <p>Should the Framework be flexible to add additional:</p> <ul style="list-style-type: none"> - Products? Important that we do not stifle innovation through increases in product development costs, thereby depriving consumers more efficacious, lower-cost alternatives. - Standards for hazardous products in commerce? We have watchdogs in place for shipment, labeling, etc. Ensure that they have the resources to do their job adequately. - Specific regulatory thresholds for each product? A multiplicity of laws/regulations will be burdensome to manufacturers/distributors; will likely contribute to sensory overload to the consumers (thereby lowering his/her attention to specific products with higher risk). Many consumers do not read the product labels now provided. - Have a single consumer product compliance and enforcement agency? At first blush, sounds good. However, human safety is of a different ilk than carbon footprint or global warming or even environmental fate. |
| Marilyn Johnson | <p>How to target Education and Outreach for:</p> <ul style="list-style-type: none"> - Consumer? Where consumers shop - in stores and online. - Industry? About the laws, and incentives towards innovation. <p>What kind of Enforcement Tools? Restrict market access, and include education to the public about companies and product facts.</p> <p>Should the Framework be flexible to add additional:</p> <ul style="list-style-type: none"> - Products? Yes absolutely. - Standards for hazardous products in commerce? Yes, absolutely. - Specific regulatory thresholds for each product? Everything should be relative and with incentive and drivers to continually improve. Thresholds set today can be outdated tomorrow, and changing the laws are onerous and resource depleting. A more 'active' or 'alive' system should be used in today's dynamic world. - Have a single consumer product compliance and enforcement agency? If that makes sense and is necessary. |
| Carol Massey | <p>How to target Education and Outreach for:</p> <ul style="list-style-type: none"> - Consumer? Yes - Industry? Yes <p>What kind of Enforcement Tools? Fines.</p> <p>Should the Framework be flexible to add additional.</p> <ul style="list-style-type: none"> - Products? Yes - Standards for hazardous products in commerce? Yes. - Specific regulatory thresholds for each product? Yes. - Have a single consumer product compliance and enforcement agency? Yes. |

DRAFT

| | |
|---------------|---|
| Deborah Waite | <p>How to target Education and Outreach for:</p> <ul style="list-style-type: none">- Consumer? Why? The consumer is very, very protected under California's current regulatory scheme.- Industry? Email blasts would be acceptable. <p>What kind of Enforcement Tools? Not sure what you mean by this. Fines for violations that make the enforcement program self-sufficient is likely the best alternative.</p> <p>Should the Framework be flexible to add additional:</p> <ul style="list-style-type: none">- Products?- Standards for hazardous products in commerce?- Specific regulatory thresholds for each product?- Have a single consumer product compliance and enforcement agency? <p>Since a new regulatory model is not needed, these questions are moot.</p> |
|---------------|---|

DRAFT

Attachment H Key Element: Strengthening Consumer Protection Laws

| Miscellaneous Responses | |
|--|--|
| buczekm@aol.com | <p>I think there are 2 components to consider, regulation and enforcement. Even the limited cases where some regulations exist, enforcement is always a challenge and cannot be done efficiently by adding more state employees to patrol the borders and ports. So the burden for enforcement must be placed equally on the importer of record and the retail outlet selling the product to the consumer, unless both are responsible there will be gaps.</p> <p>I think that California is more than willing to provide protection to its consumers but like everyone else, it does not have the proper data on long term, low level exposure to certain chemicals and on available alternatives.</p> <p>I think that the government is responsible to set up the protocol for gathering the information and for making that information available to the consumer in an easy to use manner. I think the importer and retailer should be responsible for the products they sell.</p> |
| Bob Rawson Industrial Waste Inspector President IWS Corporation College wastewater instructor Environmentalist Inventor Veteran Farmer parent | <p>I would not ask for nor willingly accept any restrictions on my access to any non-nuclear chemical or product of commerce, but rather I would request that all such chemicals be adequately and completely described in their label so that the important characteristics and formula of any chemical or product content is fully disclosed. Consumers need and deserve to be told the contents, of what they are buying so that they know the short term and chronic toxicity and physical dangers to themselves and those around them when they use a product. They need to know the proper disposal methods, fire explosion and toxicity of a product and what its incompatibilities are. They need to know proper shelf life and application rate and recommended application use. People need and deserve to know what the antidote is and who they should call for medical information or intervention. Give the people a complete and FULL DISCLOSURE, not restrictions on our personal economic and intellectual freedoms. I want to know the chemical formula pertaining to all components in all products that I purchase. From this I can research whether it is good for me and what its short and long term implications are. I refuse to purchase any product that does not disclose its formula so that I, as an educated person, can determine or find out what this compound is and the degree of toxicity it represents to me and the environment. I like the idea of an MSDS plus being a required complement the sale of every product on the market. Please don't play big brother and try to restrict my access to anything. If I contaminate the environment bring civil and criminal charges on me but don't treat me as a dumb shit who is not capable of being a wise consumer when given proper information. Just tell me and everyone around by proper labeling, what we need to know so we can be responsible adults and act like responsible adults. I do not want any entity telling me that I cannot purchase a chemical that would be useful to me when used in a prescribed manner. Example I use colchicine for scientific plant research to change the chromosome number of plants in order to hybridize them. It is a poison. I do not want to have to obtain a license or be part of a university staff knighted with a PhD or owned by a mega corporation in order to conduct my</p> |

| Miscellaneous Responses | |
|---|--|
| | <p>research. I just want to have the MSDS information made fully available to me and I want people like me held accountable for the proper use and safe disposal of the products we purchase. If I do not properly use and dispose of the product then and only then do I want government to impose its heavy hand.</p> <p>Thomas Edison would not have invented the light bulb if he could not have accessed the raw materials for his research. Real intellectual advancements will come from individuals, not bureaucratic universities and corporations. It always has been so and it always will be so. At this point we as individuals in society are almost unable to solve our own problems or those of society because we are so personally restricting the minds and actions of the individuals who could best provide us with the answers we desperately need. Instead of this folly of regulatory tyranny and Ludite intellectual and social stagnation lets look at a model that can provide us with answers to our pressing problems. One such answer is simply requiring adequate truth and full disclosure in labeling. If a few hundred million pounds of pesticides are used on our crops, how about identifying those pesticides for us and telling us the levels of these on the food we eat and products we consume so we can determine the consequences of these levels on our food. How about making accountability on the store shelf where it really counts. I would rather buy a poison for a specific purpose that I am intending than buy a poison that I am unaware of and defenseless against.</p> |
| Ann Mason | <p>In your e-mail a note identified the possible "chemicals of concern."</p> <p>ACC's Chlorine Chemistry Division responds that the use of the term "halogens and other aromatic hydrocarbons" includes an extremely broad group of chemicals. As a result, it is not clear what substances CA is considering and it is difficult, if not impossible to respond to the request. As it relates to halogenated compounds, it is important to note that:</p> <ul style="list-style-type: none"> * Halogens in and of themselves are not aromatic. * Halogenated compounds consist of a very broad set of distinct compounds--some of which are inorganic and others organic. Each compound has varying chemical characteristics. * Halogenated compounds include a huge group of compounds that provide the essential building block chemistry for the tool box of innovation. ACC and its members value innovation and strive to provide the raw materials that make energy conserving, environmentally friendly, and value enhancing products possible. As such, our companies use a variety of chemical and engineering tools. Among these tools, halogen chemistry is an essential part of innovating and manufacturing beneficial products. * Aromatic hydrocarbons suggest another broad set of compounds--some of which might have a halogen. |
| Sarah Brozena, American Chemistry Council | <p>In response to the DTSC's questions below, the American Chemistry Council would like to provide DTSC some information about the laws, regulations and programs to which we and the entire chemical value chain are subject. These layers of protection are applied to products throughout the business of chemistry's value chain - thus providing protection to consumers every day. This information should provide you a broader perspective on some of the questions you posed below. Also, please see the two attachments, 1) explaining the US business of chemistry chain of commerce and 2) more</p> |

Miscellaneous Responses

detail on how the Toxic Substances Control Act functions.

a) **EVALUATION OF PRODUCTS:** The business of chemistry evaluates products before they reach the marketplace for health, safety and environmental compliance. A portion of our research investment helps evaluate products before they reach the marketplace. These laws regulate the development of new chemical products:

- Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) sets requirements for pesticide product testing and approval by EPA;
- Federal Food, Drug and Cosmetics Act (FFDCA) requires pre-market approval by the Food and Drug Administration (FDA) of all new drugs, food additives, medical devices and materials that come into contact with food and drugs, and medical devices;
- Toxic Substances control Act (TSCA) requires EPA evaluation of all new chemicals and if EPA has a concern about potential risk, it can prohibit or limit the manufacture, use or distribution of that product.

b) **POLLUTION PREVENTION:** We have reduced our emissions by more than 75% over the past twenty years through the:

- Clean Air Act, which includes a permit program requiring facilities to report on chemicals released and steps taken to reduce that release;
- Clean Water Act, which regulates the discharges of pollutants into the waters of the US through specific wastewater standards set by EPA and states;
- Resource Conservation and Recovery Act, which gives EPA the authority to control the generation, transportation, treatment, storage and disposal of hazardous waste;
- Emergency Planning and Community Right to Know Act, which establishes the Toxic Release Inventory (TRI) and is set up to inform communities and its citizens of chemical hazards in their areas. EPCRA requires businesses to report locations and quantities of chemicals released; and the
- Pollution Prevention Act, which establishes the national policy that pollution should be prevented or reduced at the source whenever feasible and requires reporting on waste management activities.

c) **COMPLIANCE WITH E H & S REGULATIONS:** We invest billions of dollars each year complying with environmental, health and safety regulations. The safe production and use of our products is too important to leave to chance. These laws and programs provide for thorough testing and evaluation of chemicals in commerce:

- TSCA gives EPA authority to require submission of details about the manufacture, processing and use of specific chemicals, the potential for human exposure and health and safety information;
- FIFRA provides for periodic review of registered pesticides to evaluate changes in use patterns;
- FFDCA establishes safe standards of chemical content for various products;
- The High Production Volume (HPV) Challenge Program and the Voluntary Children's Chemical Evaluation Program (VCCEP) are voluntary initiatives under which the chemistry industry supplies EPA with evaluation data on chemicals. This information is publicly available.
- Chemical Assessment and Management Program (ChAMP): EPA is now engaged in a new program, ChAMP, to prioritize by 2012 the HPV chemicals

| Miscellaneous Responses | |
|---|--|
| | <p>as well as moderate volume chemicals for further evaluation and decisions.</p> <p>d) WORKER SAFETY: Our industry's worker safety record is four times better than the US manufacturing average.</p> <ul style="list-style-type: none"> -- The Occupational Safety and Health Act (OSHA) requires evaluation of chemical hazards and preparation of labels and material safety data sheets to convey hazard information to workers. -- The Hazardous Materials Transportation Act (HMTA) was established to protect against risks from transportation of hazardous materials in commerce. <p>e) CONSUMER PROTECTION: Chemistry is a critical building block of almost all of the products we use every day. These laws govern consumer protection and risks to public health:</p> <ul style="list-style-type: none"> -- Consumer Product Safety Act (CPSA) sets a standard to reduce or eliminate any unreasonable risk of injury they find associated with a consumer product. It provides the Consumer Product Safety commission (CPSC) with authority to pursue product recalls or bans. -- Federal Hazardous Substances Act (FHSA) requires that certain hazardous household products bear cautionary labeling to alert consumers to potential hazards and to inform them of measures to protect themselves from those hazards. -- Food Quality Protection Act (FQPA): establishes a health based safety standard for pesticide residue in all foods -- Poison Packaging Prevention Act (PPPS) authorizes the CPSC to impose standards for packaging to prevent injury to children -- Safe Drinking Water Act (SCWA) protects public health by regulating the national's public drinking water supply. <p>f) RESPONSIBLE CARE: Through initiatives called Responsible Care, the American Chemistry Council (ACC) member companies go above and beyond government rules and regulations. We employ a rigorous management system that is verified by third party auditors and we share our results with the public. Our progress is measured, tracked and available for review at: www.responsiblecare-US.org</p> <p>ACC also operates the Chemical Transportation Emergency Center, or CHEMTREC, which is a 24/7 resource for emergency responders. Another program, the Transportation Community Awareness and Emergency Response, or TRANSCAER, helps communities prepare for and respond to potential hazardous material transportation incidents.</p> <p>g) BENEFITS OF CHEMISTRY: Chemistry is the essential formula behind the products and services that make our lives safer, healthier and better. As a science based enterprise, we make decisions based on science and believe it is the best foundation for all sound policy and the management of chemicals. Science also informs the pervasive culture of safety that helps our industry operate safely, profitably, and with care for future generations.</p> |
| Carrie Nagy, MPH Epidemiologist Toxics Epidemiology Program | I applaud your efforts to tackle this enormous task of looking at consumer protection when it comes to chemicals found in consumer products. As someone who works for the LA County Dept of Public Health, Toxics Epidemiology Program, I would love to see more consumer protection and better definitions and regulations for dealing with potentially hazardous |

Miscellaneous Responses

products. The format of the following questionnaire, however makes it very difficult for me to respond to, let alone in a timely manner.

The questions presented here are very open ended and cumbersome, warranting many re-reads to even understand where you are coming from. I wonder who the audience is that you expect to answer this and feel that the wording might be okay if I were sitting at a table with all of you and this were a topic of discussion. In fact, the whole format reminds me of someone's notes from the planning committee's brainstorming session.

I do understand the complexity of what you are tackling, but in the future, would you please make use of current technology available to you for administering surveys of this kind? Email format is not appropriate for asking questions of this nature and depth. It is too difficult to understand what you are really looking for in an answer-- I felt like I needed someone to hold my hand through the process. If you want meaningful responses, then I suggest you ask your staff to complete the questionnaire themselves and make sure that the questions can be answered in brief one-word or one-sentence answers. Having 14 questions disguised as 3 is very confusing and misleading. Please try to use multiple choice rather than open-ended questions. This will help your responders understand the range and scope of what is possible as an answer.

Perhaps it would be helpful in the future to consult with someone like myself, an epidemiologist, who is very familiar with survey design and analysis. An online survey can be very quick and even free if you use such sites as surveymonkey.com and then email your listserve a link to the survey. This is surely an option to you as government agency since I recently completed one for the CA Biomonitoring Program, which would've faced similar confidentiality concerns.

Please feel free to contact me if you have any questions. I really do appreciate the creation of the Green Chemistry Initiative and all of your hard work on this and sincerely hope that my critical comments might be used to better your efforts.